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APPENDIX TO THE JOURNALS

OF THE

SENATE AND ASSEMBLY

OF THE

THIRTY-THIRD SESSION

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA.

S.F. PUBLIC LIBRARY

VOLUME II.



SACRAMENTO:
A. J. JOHNSTON, : : : : : : : SUPERINTENDENT STATE PRINTING.
1899.

328.794 L12:33

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4—Biennial Report of the Trustees of the State Normal School at San José. 1897-1898.
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BIENNIAL REPORT OF THE TRUSTEES

OF THE

CALIFORNIA STATE LIBRARY

FOR THE

FORTY-EIGHTH AND FORTY-NINTH FISCAL YEARS.

July 1, 1896, to June 30, 1898.



SACRAMENTO:
A. J. JOHNSTON, : : : : SUPERINTENDENT STATE PRINTING.
1899.

REPORT OF THE TRUSTEES OF THE CALIFORNIA STATE LIBRARY.

SACRAMENTO, CAL., June 30, 1898.

To his Excellency JAMES H. BUDD, *Governor of California:*

We have the honor of submitting to you, in conformity with law, our biennial report for the forty-eighth and forty-ninth fiscal years. The report of the State Librarian is hereto attached and made a part hereof. It will be noticed that the two preceding years cover almost entirely the administration of our predecessors. As will be seen, the receipts for said period amount to $40,142 65; the expenditures amount to $43,622 46; the balance on hand, as per statement of the Controller, is $8,969 88.

We desire to follow in the line of the several suggestions contained in the report of the State Librarian, and especially commend for your notice his suggestion with reference to providing separate rooms for the Law Department and the opening of the same to the public during evening hours; the providing of a method for the future annual inventorying of books without extra employment; the carrying out of the new system of cataloguing which he has commenced; the strict enforcement of the rules pertaining to the loaning of books, and the suggestions with reference to the future of the library.

Respectfully submitted.

FRANK D. RYAN,
President of Board.
ALLEN B. LEMMON.
BRADNER W. LEE.
J. H. NEFF.
THOS. FLINT.

REPORT OF THE LIBRARIAN.

To the Honorable Board of Trustees of the California State Library:

GENTLEMEN: I have the honor to submit the following report for the two fiscal years ending June 30, 1898:

As State Librarian, I took possession of the office on the 6th day of April, a little less than three months prior to the date of filing this report. I have, therefore, to render an account of the two fiscal years during the incumbency of a former administration, with the exception of the time from April 6th to June 30th.

According to the report of the Controller of State, there is to the credit of the library fund, excluding the June receipts and expenditures, the sum of $8,969 88.

The receipts for these two years amount to $40,142 65, and the expenditures aggregate the sum of $43,561 97. Of this sum there has been paid out for books, maps, periodicals, newspapers, etc., the sum of $19,803 09.

In these two years the volumes in the library have increased from 100,618 to 107,010. On April 6, 1898, there were 160 volumes on the order list of the General Department, averaging about $400. Besides these, there were standing orders for art works, fine editions of noted authors, such as "Bancroft's Book of Wealth," at $100 per section, of which five sections are yet to come; "Brinkley's Japan," at $40 per section, of which four sections are yet to come, and the Grolier Club publications, at $25 per volume. The Boston Book Company holds orders amounting to about $1,600, for Supreme Court Reports and decisions of foreign countries, some of which were ordered as far back as 1886.

Since April 6th, I have ordered about 240 volumes, aggregating about $560. This order covers many of the new publications for the coming year.

I find that the books of the library have been selected with judgment, and if the same critical study is given to future purchases, it is destined to become a noted institution.

The report of the Librarian for 1890 shows 5,496 volumes to be lost or missing, the cause attributed to theft. This is the last inventory taken of the library property, and while I believe that the loss since that time has been but little, still this report illustrates not only the responsibility in the work and accuracy of a new inventory, but the importance and necessity for one.

A law was passed by the Legislature which compels all State officers

to make and conclude an inventory of all State property in their charge on or before the 31st day of December, 1898. In conformity therewith, and in obedience to the direction of your honorable body to take such inventory, I did, on the first day of May, commence the taking of said inventory, and for such purpose I employed extra assistance, as authorized by your honorable body. I can positively state that said work could not be carried on without this extra assistance; that while this extra work for awhile increases the payroll, it is still $125 per month less than formerly expended for help without this extra necessity.

The work of inventorying is being prosecuted with care and industry, and is progressing as rapidly as the nature and scope of the task will permit.

The system of cataloguing originally adopted and now in vogue, seems to me to be inadequate to the needs and purposes of the library. The books are now catalogued only under the head of authors. This system reveals its vast treasures only to the savant, whose familiarity with authors and subjects enables him to turn to what he may desire. This is especially true in the Medical Department, which, valuable in itself, is yet deprived of its opportunities of enlightenment, save to those possessing a technical knowledge concerning it. When these volumes shall have largely increased in numbers the reasons for a different system of cataloguing will become more apparent. I have, in conformity with these ideas, commenced a different system, known as the dictionary catalogue. This is being done with the force at hand, and will not necessitate extra expense. It relates, however, to the new books, and affords no relief for the great library already on hand.

Under the rules, books taken from the library are required to be returned within two weeks from the time of taking them. I find receipts against persons privileged under the law to take books, bearing date from 1893 to the present time. By persistent effort I have been able to call in many of these books.

The spirit of the library has always been one of accommodation, which is surely commendable, yet, the experience of human affairs is an illustration of the fact that accommodation is apt to beget a disregard on the part of those benefited. I find that an enforcement of the rule is an innovation looked upon with disfavor, yet I believe that when the observance of the rule becomes the custom, it will prove a protection, not only to the lender but to the State officers themselves, who become sponsors for the number of people daily receiving books from the library. I am beginning a new system of receipts, showing the relation between the library, the State officer indorsing, thereby becoming responsible, and the actual recipient, which I hope will more effectually enforce the "limit of time" rule. I would suggest a change in this rule, permitting the Librarian to fix the maximum of time for which books may be

retained. It often depends upon the character of a book and the matter under investigation as to how long it should remain in the hands of the recipient.

In making the order on the Controller for the money covering the monthly expenses of the library, I have adopted the plan of attaching thereto a statement showing in detail the items of expenditure. This provides a permanent index in the way of a public record to your acts and authorizations, as well as my own, and it also provides the public at all times with a complete knowledge of library expenditures and the nature of them. The public should have such an index, easily accessible, in order that it may be kept advised as to library matters.

I find a lack of accommodation in the library, and it becomes necessary to provide room for the books fast accumulating. To make extra shelves is to provide only for a temporary relief, and it would have such a result of disarrangement as to destroy the idea of system. The Law Department seems to be entire and of itself, separately catalogued and requiring the especial supervision of a deputy, but it is so located as to render it impossible to accommodate attorneys from different parts of the State who may seek its volumes after office hours without breaking into the rules appertaining to the conduct of the entire library. If the Law Library could be assigned to rooms separate and apart in the building, rules could be adopted applicable to it, and especially designed to accommodate the legal profession at all hours, thereby rendering it more serviceable to the people engaged in enforcing or defending their rights. This arrangement would provide accommodation in the present law room for another department of literature, filling a present necessity. A private reading and writing room could be arranged where the Law Library now is, making more available, and surely more inviting, current literature, which in this modern age affords research into every branch and condition of development.

The great study of the library, however, lies in the question of its utility. It is supported by the State, yet it is simply the State's store house of art and literature. If such is its design, it surely fullfills its purpose. If, on the contrary, it is supposed to become useful alike to the people generally of California, it falls short of its object.

I find in the discussion of this question that several ideas are advanced: One is to maintain it as a reference library; one is to make it a circulating library; and another is to so amend the laws as to bring it in contact with the several town and city libraries, and to inaugurate a system of exchanges with them, which would enable it to furnish them with books otherwise beyond their control. Even this plan would not contemplate the shipment of works of art, or rare and costly editions, yet it would enable the reader to receive the benefit of valuable matter now beyond the reach of his own local library. This is a proposition

which should commend itself to the earnest consideration of your honorable body.

The library should be inventoried once a year, and a system should be adopted so as to enable the Librarian to do this with the regular force and without the necessity of employing extra assistance. This could be done by a system of exterior numbering, which would enable a person, by a simple numerical count, to ascertain by any missing number the name and title of the book represented thereby. Books are difficult to trace after they have been lost for a long period of time, and it appears to me that it is worth the trouble, if by reason thereof you can the better provide for the safe-keeping of half a million dollars' worth of State property.

I herewith submit a financial statement covering the forty-eighth and forty-ninth fiscal years, and make it a part of this my report.

Respectfully submitted.

FRANK L. COOMBS,
Librarian.

SACRAMENTO, CAL., June 30, 1898.

FINANCIAL STATEMENT.

DEBITS FOR THE FORTY-EIGHTH FISCAL YEAR.

1896—July 1	To balance on hand	$240 31
July 1	To warrant	1,173 02
Aug. 1	To warrant	1,340 01
Sept. 1	To warrant	1,203 60
Oct. 1	To warrant	1,142 87
Nov. 1	To warrant	1,294 01
Dec. 1	To warrant	1,583 26
Dec. 1	To sale of duplicates	12 50
1897—Jan. 1	To warrant	1,775 21
Feb. 1	To warrant	1,984 34
Mar. 1	To warrant	1,680 03
Apr. 1	To warrant	1,330 26
May 1	To warrant	1,108 73
June 1	To warrant	1,561 80
J'ne 23	To sale of duplicates	2 50
	Total	$17,432 45

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1896				$17,432 45	
July 1	Bancroft, Whitney & Co.	Books	2437		$183 36
July 1	W. G. Bohannan	Books	2438		71 50
July 1	Lawyers' Coöperative Publishing Co.	Books	2439		5 00
July 1	The Whitaker-Ray Co.	Books	2440		4 40
July 1	Ernest Hardt	Books	2441		18 00
July 1	John J. Newbegin	Books	2442		85 00
July 1	J. H. Bogartz	Books	2443		42 00
July 1	H. S. Phillips	Books	2444		8 00
July 1	Macmillan Co.	Books	2445		3 50
July 1	The Boston Book Co.	Books	2446		2 75
July 1	Joseph Hofmann	Books	2447		3 43
July 1	C. Suter	Bookcase	2448		14 50
July 1	Tice & Lynch	Custom fees	2449		1 48
July 1	Wells, Fargo & Co.	Service	2450		13 94
July 1	D. Appleton & Co.	Subscription	2451		5 00
July 1	The Placer Herald	Subscription	2452		2 50
July 1	Mining and Scientific Press	Subscription	2453		6 00
July 1	Pacific Rural Press	Subscription	2454		2 00
July 1	J. L. Jackson	Subscription	2455		7 80
July 1	The San Francisco Report	Subscription	2456		3 00
July 1	Capital Telephone and Telegraph Co.	Service	2457		3 50
July 1	Sunset Telephone and Telegraph Co.	Service	2458		10 05
July 1	Union Ice Co.	Ice	2459		18 20
July 1	W. P. Mathews	Salary	2460		200 00
July 1	N. D. Perkins	Salary	2461		150 00
July 1	Amy Hopkins	Salary	2462		100 00
July 1	Jane O'Hare	Salary	2463		30 00
July 1	Nora J. Casey	Salary	2464		50 00
July 1	Western Union Telegraph Co.	Service	2465		3 00
July 1	B. F. Stevens	Books	2466		14 08
	Amount carried forward			$17,432 45	$1,061 99

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1896	Amount brought forward			$17,432 45	$1,061 99
July 1	The Monitor	Subscription	2467		5 00
July 1	Weinstock, Lubin & Co.	Truck	2468		12 00
July 1	J. J. Laracy	Books	2469		27 00
July 1	W. D. Perkins	Postage, etc.	2470		34 03
July 1	R. O. Cravens	Notary fees	2471		4 50
July 1	Wm. Wood & Co.	Books	2472		7 50
July 1	D. Appleton & Co.	Books	2473		6 00
July 1	William Wicks	Labor	2474		15 00
Aug. 1	Bancroft, Whitney & Co.	Books	2475		110 30
Aug. 1	The Bancroft Co.	Books	2476		100 00
Aug. 1	William Doxey	Books	2477		25 00
Aug. 1	West Publishing Co.	Books	2478		52 50
Aug. 1	Lawyers' Coöperative Publishing Co.	Books	2479		2 50
Aug. 1	Dodd, Mead & Co.	Books	2480		10 94
Aug. 1	Johnson & Emigh	Books	2481		12 00
Aug. 1	Banks Bros.	Books	2482		6 00
Aug. 1	Z. F. Wharton	Books	2483		7 25
Aug. 1	The Carswell Co.	Books	2484		11 75
Aug. 1	J. J. Laracy	Books	2485		8 00
Aug. 1	John J. Newbegin	Books	2486		60 00
Aug. 1	Lea Bros. & Co.	Books	2487		41 00
Aug. 1	W. F. Purnell	Books	2488		53 36
Aug. 1	Frank Shepard	Annotations	2489		83 00
Aug. 1	Medico-Legal Journal	Subscription	2490		3 00
Aug. 1	A. J. Wooll	Sub., S. F. Examiner	2491		15 35
Aug. 1	San Francisco Call	Subscription	2492		5 85
Aug. 1	A. P. Booth	Sub., S. F. Chronicle	2493		11 70
Aug. 1	Thomas Fox, P. M.	Box rent	2494		1 00
Aug. 1	Sunset Telephone and Telegraph Co.	Service	2495		17 50
Aug. 1	Capital Transfer Co.	Service	2496		4 75
Aug. 1	The Boston Book Co.	Books	2497		32 41
Aug. 1	H. S. Phillips	Books	2498		2 00
Aug. 1	The Sugar Beet	Subscription	2499		1 00
Aug. 1	The Sunday Leader	Subscription	2500		3 00
Aug. 1	Wells, Fargo & Co.	Service	2501		6 40
Aug. 1	Forest and Stream	Subscription	2502		4 00
Aug. 1	Capital Telephone and Telegraph Co.	Service	2503		3 50
Aug. 1	Tom Scott	Plumbing	2504		14 45
Aug. 1	H. Huskisson	Sub., S. F. Bulletin	2505		1 50
Aug. 1	W. P. Mathews	Salary	2506		200 00
Aug. 1	N. D. Perkins	Salary	2507		150 00
Aug. 1	Amy Hopkins	Salary	2508		100 00
Aug. 1	Jane O'Hare	Salary	2509		30 00
Aug. 1	Nora J. Casey	Salary	2510		50 00
Aug. 1	N. D. Perkins	Expenses to S. F.	2511		10 00
Aug. 1	Edward Thompson Co.	Books	2512		6 00
Aug. 1	G. Green	Expenses	2513		20 00
Aug. 1	W. D. Perkins	Postage, expenses	2514		23 00
Aug. 1	Robert E. Cowan	Books	2515		40 00
Sept. 1	Bancroft, Whitney & Co.	Books	2516		119 00
Sept. 1	Charles S. Greene	Periodicals	2517		272 50
Sept. 1	John J. Newbegin	Books	2518		95 00
Sept. 1	J. J. Laracy	Books	2519		1 50
Sept. 1	Thomas Fox, P. M.	Cards	2520		2 00
Sept. 1	William Woods & Co.	Books	2521		7 50
Sept. 1	Scientific Publishing Co.	Books	2522		4 08
Sept. 1	Lucy Hall Greenlaw	Books	2523		14 20
Sept. 1	Joel Munsell's Sons	Books	2524		40 95
Sept. 1	H. S. Phillips	Books	2525		2 00
Sept. 1	The Boston Book Co.	Books	2526		12 25
Sept. 1	A. J. Pulsford	Books	2527		26 25
Sept. 1	Charles W. Palm & Co.	Books	2528		1 00
Sept. 1	Robert Beal	Books	2529		2 00
Sept. 1	Sunset Telephone and Telegraph Co.	Service	2530		16 40
	Amount carried forward			$17,432 45	$3,129 66

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1896	Amount brought forward			$17,432 45	$3,129 66
Sept. 1	Wells, Fargo & Co.	Service	2531		5 92
Sept. 1	Western Union Telegraph Co.	Service	2532		3 00
Sept. 1	Capital Transfer Co.	Service	2533		1 00
Sept. 1	American Journal of Insanity	Subscription	2534		5 00
Sept. 1	F. J. Zifferer	Subscription	2535		1 00
Sept. 1	Chicago Legal News	Subscription	2536		2 20
Sept. 1	Democrat Publishing Co.	Subscription	2537		5 00
Sept. 1	W. P. Mathews	Salary	2538		200 00
Sept. 1	N. D. Perkins	Salary	2539		150 00
Sept. 1	Amy Hopkins	Salary	2540		100 00
Sept. 1	Jane O'Hare	Salary	2541		30 00
Sept. 1	Nora J. Casey	Salary	2542		50 00
Sept. 1	William Wicks	Labor	2543		15 00
Sept. 1	W. D. Perkins	Postage, expenses	2544		15 00
Sept. 1	Capital Telephone and Telegraph Co.	Service	2545		3 85
Oct. 1	Bancroft, Whitney & Co.	Books	2546		26 75
Oct. 1	W. F. Purnell	Books	2547		110 63
Oct. 1	H. H. Moore	Books	2548		117 40
Oct. 1	John J. Newbegin	Books	2549		126 00
Oct. 1	William Doxey	Books	2550		7 00
Oct. 1	Lemcke & Buechuer	Books	2551		9 12
Oct. 1	The Boston Book Co.	Books	2552		15 40
Oct. 1	James A. Hoffman	Books	2553		9 81
Oct. 1	Lawyers' Coöperative Publishing Co.	Books	2554		5 00
Oct. 1	Johnson & Emigh	Books	2555		15 11
Oct. 1	Henry J. Eland	Books	2556		31 08
Oct. 1	B. F. Stevens	Books	2557		14 83
Oct. 1	E. F. Fitch	Books	2558		1 50
Oct. 1	Scientific Publishing Co.	Books	2559		4 59
Oct. 1	Thomas Fox, P. M.	Box rent	2560		3 50
Oct. 1	W. P. Mathews	Salary	2561		200 00
Oct. 1	N. D. Perkins	Salary	2562		150 00
Oct. 1	Amy Hopkins	Salary	2563		100 00
Oct. 1	Jane O'Hare	Salary	2564		30 00
Oct. 1	Nora J. Casey	Salary	2565		50 00
Oct. 1	W. D. Perkins	Postage, expenses	2566		17 50
Oct. 1	Sunset Telephone and Telegraph Co.	Service	2567		30 55
Oct. 1	H. S. Phillips	Books	2568		2 00
Oct. 1	San Francisco Call	Subscription	2569		5 85
Oct. 1	H. Kuhn	Repairs	2570		2 50
Oct. 1	H. Huskisson	Sub., S. F. Bulletin	2571		1 50
Oct. 1	West Publishing Co.	Books	2572		45 25
Oct. 1	G. Green	Expenses	2573		10 00
Nov. 1	Bancroft, Whitney & Co.	Books	2574		75 00
Nov. 1	John J. Newbegin	Books	2575		75 00
Nov. 1	W. F. Purnell	Books	2576		43 75
Nov. 1	N. E. White	Books	2577		50 00
Nov. 1	H. H. Moore	Books	2578		115 35
Nov. 1	Joel Munsell's Sons	Books	2579		153 68
Nov. 1	Charles W. Johnson	Books	2580		3 00
Nov. 1	George M. Bodge	Books	2581		5 00
Nov. 1	J. J. Laracy	Books	2582		15 00
Nov. 1	H. V. & H. W. Poor	Books	2583		7 50
Nov. 1	Berlin Photograph Co.	Books	2584		120 54
Nov. 1	Haight & Co.	Books	2585		2 50
Nov. 1	West Publishing Co.	Books	2586		3 75
Nov. 1	Publishers' Weekly	Books	2587		3 10
Nov. 1	The Boston Book Co.	Books	2588		9 65
Nov. 1	Capital Telephone and Telegraph Co.	Service	2589		3 50
Nov. 1	Capital Transfer Co.	Service	2590		2 50
Nov. 1	C. Suter	Shelves	2591		2 25
	Amount carried forward			$17,432 45	$5,560 57

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount Cr.
1896	Amount brought forward			$17,432 45	$5,560 57
Nov. 1	H. S. Phillips	Books	2592		2 00
Nov. 1	San Francisco Evening Report	Subscription	2593		1 50
Nov. 1	Guild & Lord	Subscription	2594		4 00
Nov. 1	H. E. Bower & Co.	Subscription	2595		2 50
Nov. 1	Locke & Lavenson	Shades	2596		3 75
Nov. 1	Wells, Fargo & Co.	Service	2597		18 29
Nov. 1	W. P. Mathews	Salary	2598		200 00
Nov. 1	N. D. Perkins	Salary	2599		150 00
Nov. 1	Amy Hopkins	Salary	2600		100 00
Nov. 1	Jane O'Hare	Salary	2601		30 00
Nov. 1	Nora J. Casey	Salary	2602		50 00
Nov. 1	William Wicks	Labor	2603		15 00
Nov. 1	W. P. Mathews	Postage, expenses	2604		25 90
Dec. 1	Bancroft, Whitney & Co.	Books	2605		118 55
Dec. 1	Joseph A. Hofmann	Books	2606		8 04
Dec. 1	Berlin Photograph Co.	Books	2607		64 29
Dec. 1	Macmillan Co.	Books	2608		16 50
Dec. 1	D. Appleton & Co.	Books	2609		82 00
Dec. 1	John J. Newbegin	Books	2610		115 00
Dec. 1	William Wood & Co.	Books	2611		13 50
Dec. 1	The Boston Book Co.	Books	2612		27 75
Dec. 1	J. B. Lippincott	Books	2613		12 00
Dec. 1	William Doxey	Books	2614		6 00
Dec. 1	Robert E. Cowan	Books	2615		60 00
Dec. 1	Lawyers' Coöperative Pub. Co.	Books	2616		5 00
Dec. 1	W. B. Saunders	Books	2617		21 00
Dec. 1	Soc. for Promotion of English	Books	2618		7 50
Dec. 1	Edward Thompson Co.	Books	2619		10 50
Dec. 1	Gustav E. Steckert	Books	2620		6 02
Dec. 1	F. M. Husted	Books	2621		13 00
Dec. 1	Christian Literature Co.	Books	2622		3 00
Dec. 1	Am. Statute Law Book Co.	Books	2623		379 26
Dec. 1	W. and M. College	Quarterly Sub	2624		3 00
Dec. 1	J. L. Jackson	Sub. Record-Union	2625		7 80
Dec. 1	Western Union Telegraph Co.	Service	2626		3 50
Dec. 1	C. H. Rave	Keys, etc.	2627		2 25
Dec. 1	N. D. Perkins	Salary	2628		150 00
Dec. 1	Amy Hopkins	Salary	2629		100 00
Dec. 1	Jane O'Hare	Salary	2630		30 00
Dec. 1	Nora J. Casey	Salary	2631		50 00
Dec. 1	George Betz	Salary	2632		45 00
Dec. 1	William Wicks	Labor	2633		39 00
Dec. 1	H. S. Crocker & Co.	Stationery	2634		18 45
Dec. 1	Wells, Fargo & Co.	Service	2635		36 55
Dec. 1	R. O. Cravens	Notary fees	2636		3 00
Dec. 1	L. L. Lewis & Co.	Iron pins	2637		3 50
Dec. 1	Capital Transfer Co.	Service	2638		2 25
Dec. 1	A. A. Hobe	Sub. S. F. Chronicle	2639		11 70
Dec. 1	Capital Telephone and Telegraph Co.	Service	2640		3 50
Dec. 1	Sunset Telephone and Telegraph Co.	Service	2641		46 25
Dec. 1	W. P. Mathews	Postage, expenses	2642		52 15
Dec. 1	Ballenger & Richards	Books	2643		6 45
1897					
Jan. 1	Bancroft, Whitney & Co.	Books	2644		85 25
Jan. 1	W. F. Purnell	Books	2645		22 05
Jan. 1	Joel Munsell's Sons	Books	2646		120 15
Jan. 1	Houghton, Mifflin & Co.	Books	2647		25 00
Jan. 1	The Bancroft Co.	Books	2648		100 00
Jan. 1	Berlin Photograph Co.	Books	2649		120 54
Jan. 1	Chas. Scribner's Sons	Books	2650		1 12
Jan. 1	The Macmillan Co.	Books	2651		19 82
	Amount carried forward			$17,432 45	$8,230 70

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1897	Amount brought forward			$17,432 45	$8,230 70
Jan. 1	West Publishing Co.	Books	2652		8 00
Jan. 1	Sampson, Murdoc & Co.	Books	2653		12 50
Jan. 1	Sampson, Murdoc & Co.	Books	2654		3 00
Jan. 1	Omaha Publishing Co.	Books	2655		6 00
Jan. 1	Jas. Gossill's Sons	Books	2656		5 00
Jan. 1	B. N. Bugbey	Books	2657		4 00
Jan. 1	The Boston Book Co.	Books	2658		21 00
Jan. 1	George P. Humphrey	Books	2659		75 00
Jan. 1	H. S. Phillips	Books	2660		2 00
Jan. 1	Chicago Directory Co.	Books	2661		8 26
Jan. 1	Grass Valley Union	Subscription	2662		5 00
Jan. 1	The Wasp	Subscription	2663		5 00
Jan. 1	San Francisco Call	Subscription	2664		5 85
Jan. 1	The Engineering Record	Subscription	2665		5 00
Jan. 1	Tice & Lynch	Postage	2666		65
Jan. 1	Library Bureau	Cards	2667		17 80
Jan. 1	Capital Telephone and Telegraph Co.	Service	2668		3 50
Jan. 1	Tom Scott	Heater	2669		166 45
Jan. 1	Capital Transfer Co.	Service	2670		1 50
Jan. 1	C. Suter	Bookcase	2671		106 25
Jan. 1	William Hatteroth	Skeleton	2672		69 50
Jan. 1	Sac. Electric P. & L. Co.	Repairs	2673		1 33
Jan. 1	N. D. Perkins	Salary	2674		150 00
Jan. 1	Amy Hopkins	Salary	2675		100 00
Jan. 1	Jane O'Hare	Salary	2676		30 00
Jan. 1	Nora J. Casey	Salary	2677		50 00
Jan. 1	George Betz	Salary	2678		90 00
Jan. 1	William Wicks	Labor	2679		51 00
Jan. 1	Williamson & Co.	Books	2680		12 25
Jan. 1	H. K. Goddard	Books	2681		35 00
Jan. 1	Hubbell Publishing Co.	Books	2682		5 35
Jan. 1	John J. Newbegin	Books	2683		90 00
Jan. 1	H. H. Moore	Books	2684		71 25
Jan. 1	W. C. Sharpe	Books	2685		10 81
Jan. 1	Trow Directory Co.	Books	2686		7 50
Jan. 1	B. N. Bugbey	Books	2687		15 00
Jan. 1	W. P. Mathews	Postage, expenses	2688		30 53
Feb. 3	Bancroft, Whitney & Co.	Books	2689		80 65
Feb. 3	W. F. Purnell	Books	2690		271 26
Feb. 3	The Boston Book Co.	Books	2691		12 75
Feb. 3	Bruns & Hessling	Books	2692		1 70
Feb. 3	West Publishing Co.	Books	2693		31 25
Feb. 3	D. G. Francis & Co.	Books	2694		4 26
Feb. 3	Poet-Lore Co.	Books	2695		20 37
Feb. 3	Banks & Bros.	Books	2696		18 00
Feb. 3	Chas. Scribner's Sons	Books	2697		17 10
Feb. 3	Charles S. Greene	Periodicals	2698		441 30
Feb. 3	Tribune Association	Books	2699		20 00
Feb. 3	John J. Newbegin	Books	2700		80 00
Feb. 3	H. S. Phillips	Books	2701		1 00
Feb. 3	W. P. Mathews	Postage, expenses	2702		34 50
Feb. 3	Capital Telephone and Telegraph Co.	Service	2703		3 75
Feb. 3	National Citation Co.	Citations	2704		15 00
Feb. 3	R. E. Gosnell	Books	2705		15 00
Feb. 3	Cleveland Public Library	Subscription	2706		5 00
Feb. 3	J. H. Lawrence	Electric heater	2707		15 00
Feb. 3	J. J. Laracy	Books	2708		15 00
Feb. 3	Berlin Photo. Co.	Books	2709		32 14
Feb. 3	Williamson Law Book Co.	Books	2710		1 50
Feb. 3	W. H. Lawdermilk & Co.	Books	2711		4 50
Feb. 3	Scientific Publishing Co.	Books	2712		78
Feb. 3	Tom Scott	Plumbing	2713		20 00
Feb. 3	H. S. Crocker & Co.	Plumbing	2714		5 00
Feb. 3	Capital Transfer Co.	Service	2715		2 50
Feb. 3	N. D. Perkins	Salary	2716		150 00
	Amount carried forward			$17,432 45	$10,831 29

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1897	Amount brought forward			$17,432 45	$10,831 29
Feb. 3	Amy Hopkins	Salary	2717		100 00
Feb. 3	Jane O'Hare	Salary	2718		30 00
Feb. 3	Nora J. Casey	Salary	2719		50 00
Feb. 3	Frank Brooks	Salary	2720		93 00
Feb. 3	A. J. Wooll	Subscription	2721		15 60
Feb. 3	Banking Law Journal Co.	Subscription	2722		3 00
Feb. 3	Political Record	Subscription	2723		2 50
Feb. 3	Woodland Democrat	Subscription	2724		5 00
Feb. 3	The Petit Courier	Subscription	2725		1 00
Feb. 3	University of Cal. Magazine	Subscription	2726		1 50
Feb. 3	San Francisco Report	Subscription	2727		1 50
Feb. 3	H. Huskisson	Subscription	2728		1 50
Feb. 3	Times-Mirror Co.	Subscription	2729		9 00
Feb. 3	Whitaker & Ray Co.	Subscription	2730		1 50
Feb. 3	Kelly & Co.	Books	2731		7 16
Feb. 3	Thomas Fox, P. M.	Box rent	2732		3 50
Feb. 3	Astro. Society of P. Coast	Dues	2733		5 00
Feb. 3	Wells, Fargo & Co.	Service	2734		31 05
Feb. 3	Western Union Telegraph Co.	Service	2735		5 22
Feb. 3	R. M. Richardson	Salary	2736		48 00
Feb. 3	W. W. Cohn	Salary	2737		60 00
Feb. 3	J. W. Babcock	Repairs	2738		5 00
Feb. 3	R. O. Cravens	Salary	2739		110 00
Feb 3	M. A. Nurse	Salary	2740		75 00
Mar. 1	Bancroft, Whitney & Co.	Books	2741		124 50
Mar. 1	W. F. Purnell	Books	2742		109 85
Mar. 1	William Downing	Books	2743		50 76
Mar. 1	P. S. King & Co.	Books	2744		37 17
Mar. 1	Henry Sothern & Co.	Books	2745		25 14
Mar. 1	William Wood & Co.	Books	2746		7 50
Mar. 1	Lawyers' Coöperative Publishing Co.	Books	2747		5 00
Mar. 1	The Boston Book Co.	Books	2748		18 28
Mar. 1	Carpenter & Morehouse	Books	2749		5 00
Mar. 1	Lutheran's in all Lands Co.	Books	2750		2 75
Mar. 1	William Doxey	Books	2751		28 00
Mar. 1	Joseph Bayan	Books	2752		175 00
Mar. 1	John J. Newbegin	Books	2753		90 00
Mar. 1	B. N. Bugbey	Books	2754		7 25
Mar. 1	E. F. Fitch	Books	2755		5 50
Mar. 1	H. S. Crocker & Co.	Books	2756		4 00
Mar. 1	San José Mercury	Subscription	2757		6 00
Mar. 1	Wells, Fargo & Co.	Service	2758		12 60
Mar. 1	Sunset Telephone and Telegraph Co.	Service	2759		41 60
Mar. 1	L. L. Lewis & Co.	Hardware	2760		90
Mar. 1	Capital Telephone and Telegraph Co.	Service	2761		3 50
Mar. 1	American Statistical Association	Subscription	2762		2 00
Mar. 1	B. Wilson & Co.	Ribbon	2763		12 08
Mar. 1	Capital Transfer Co.	Service	2764		2 75
Mar. 1	Herald Publishing Co.	Subscription	2765		3 50
Mar. 1	Land of Sunshine Co.	Subscription	2766		1 00
Mar. 1	Review Publishing Co.	Subscription	2767		5 00
Mar. 1	Hugo P. Thieme	Books	2768		50
Mar. 1	N. D. Perkins	Salary	2769		150 00
Mar. 1	Amy Hopkins	Salary	2770		100 00
Mar. 1	Jane O'Hare	Salary	2771		30 00
Mar. 1	Nora J. Casey	Salary	2772		50 00
Mar. 1	R. O. Cravens	Salary	2773		110 00
Mar. 1	Frank Brooks	Salary	2774		84 00
Mar. 1	R. M. Richardson	Salary	2775		112 00
Mar. 1	W. W. Cohn	Salary	2776		112 00
Mar. 1	M. N. Nurse	Salary	2777		75 00
Mar. 1	W. P. Mathews	Postage, expenses	2778		62 90
	Amount carried forward			$17,432 45	$13,169 35

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount Cr.
1897	Amount brought forward			$17,432 45	$13,169 35
Mar. 1	J. B. Lippincott	Books	2779		7 00
Apr. 1	Bancroft, Whitney & Co.	Books	2780		119 30
Apr. 1	W. F. Purnell	Books	2781		80 19
Apr. 1	E. A. Bowen	Books	2782		5 00
Apr. 1	John J. Newbegin	Books	2783		195 00
Apr. 1	William Doxey	Books	2784		10 00
Apr. 1	Charles Scribner's Sons	Books	2785		38 40
Apr. 1	Publishers' Weekly	Books	2786		8 95
Apr. 1	Edward Thompson Co.	Books	2787		6 00
Apr. 1	Lea Bros. & Co.	Books	2788		18 00
Apr. 1	D. Appleton & Co.	Books	2789		7 00
Apr. 1	Ave Maria	Books	2790		1 00
Apr. 1	Swan, Sonnerschein & Co.	Books	2791		1 65
Apr. 1	E. W. Spangler	Books	2792		5 00
Apr. 1	U. S. Department of Agriculture	Books	2793		2 00
Apr. 1	Charles W. Palm & Co.	Books	2794		50
Apr. 1	Wells, Fargo & Co.	Service	2795		7 02
Apr. 1	W. P. Mathews	Postage, expenses	2796		40 00
Apr. 1	Capital Transfer Co.	Service	2797		2 75
Apr. 1	Capital Telephone and Telegraph Co.	Service	2798		3 50
Apr. 1	Sunset Telephone and Telegraph Co.	Service	2799		37 50
Apr. 1	Frank Shepard	Annotations	2800		5 00
Apr. 1	N. D. Perkins	Salary	2801		150 00
Apr. 1	Amy Hopkins	Salary	2802		100 00
Apr. 1	Jane O'Hare	Salary	2803		30 00
Apr. 1	Nora J. Casey	Salary	2804		50 00
Apr. 1	Frank J. Brooks	Salary	2805		81 00
Apr. 1	M. A. Nurse	Salary	2806		50 00
Apr. 1	R. O. Cravens	Salary	2807		110 00
Apr. 1	Occidental Medical Times	Subscription	2808		2 00
Apr. 1	Whitaker & Ray Co.	Subscription	2809		1 50
Apr. 1	Thomas Fox, Postmaster	Box rent	2810		1 00
Apr. 1	San Francisco Bulletin	Subscription	2811		1 50
May 1	W. F. Purnell	Books	2812		42 62
May 1	William Doxey	Books	2813		45 50
May 1	John J. Newbegin	Books	2814		50 00
May 1	H. H. Moore	Books	2815		142 75
May 1	West Publishing Co.	Books	2816		44 25
May 1	Edward Thompson Co.	Books	2817		6 00
May 1	Banks Bros.	Books	2818		9 00
May 1	D. C. Munro	Books	2819		3 00
May 1	Massachusetts Historical Society	Books	2820		3 22
May 1	The Carswell Co.	Books	2821		2 25
May 1	Wm. Wood Co.	Books	2822		13 50
May 1	Monitor Publishing Co.	Subscription	2823		3 87
May 1	W. H. Lowdermilk & Co.	Books	2824		2 25
May 1	Locke & Lavenson	Repairs	2825		5 50
May 1	Chas. W. Palm & Co.	Code slips	2826		6 00
May 1	Western Union Telegraph Co.	Service	2827		1 36
May 1	Capital Transfer Co.	Service	2828		1 25
May 1	H. S. Phillips	Books	2829		2 00
May 1	Genevieve Green	Salary	2830		200 00
May 1	N. D. Perkins	Salary	2831		150 00
May 1	Amy Hopkins	Salary	2832		100 00
May 1	Nora J. Casey	Salary	2833		50 00
May 1	Jane O'Hare	Salary	2834		30 00
May 1	William Wicks	Labor	2835		18 00
May 1	N. D. Perkins	Expenses, S. F.	2836		10 00
May 1	P. A. Byrne	Cleaning carpets	2837		14 62
May 1	C. Suter	Repairs	2838		1 25
May 1	Wells, Fargo & Co.	Service	2839		5 34
	Amount carried forward			$17,432 45	$15,310 64

CREDITS FOR THE FORTY-EIGHTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1897	Amount brought forward			$17,432 45	$15,310 64
May 1	Sunset Telephone and Telegraph Co.	Service	2840		53 85
May 1	Wm. R. Hall	Repairing furniture	2841		51 20
May 1	C. C. Hine	Subscription	2842		6 00
May 1	Frank L. White	Subscription	2843		6 00
May 1	S. F. Evening Report	Subscription	2844		1 50
May 1	San Francisco Call	Subscription	2845		7 80
May 1	Pacific Rural Press	Subscription	2846		2 00
May 1	The So. Historical Society	Subscription	2847		3 00
May 1	The Chap Book	Subscription	2848		1 60
May 1	Pacific W. & S. Review	Subscription	2849		1 50
May 1	Popular Astronomy	Subscription	2850		2 50
May 1	The Whitaker-Ray Co.	Subscription	2851		1 00
May 1	Lawyers' Coöperative Publishing Co.	Books	2852		4 00
May 1	The Boston Book Co.	Books	2853		12 50
May 1	E. D. McCabe	Postage, expenses	2854		140 00
May 1	J. J. Laracy	Books	2855		5 00
May 1	Alonzo Crawford	Books	2856		2 25
May 1	Capital Telephone and Telegraph Co.	Service	2857		3 50
June 1	Bancroft, Whitney & Co.	Books	2858		148 25
June 1	W. F. Purnell	Books	2859		252 03
June 1	R. E. Gosnell	Books	2860		15 00
June 1	Joseph A. Hofmann	Books	2861		22 57
June 1	Joel Munsell's Sons	Books	2862		87 30
June 1	A. M. Germeshasen	Books	2863		2 50
June 1	Lawyers' Coöperative Publishing Co.	Books	2864		5 00
June 1	W. B. Walkup	Map, Ventura Co.	2865		10 00
June 1	John J. Newbegin	Books	2866		125 00
June 1	Joshua B. Richmond	Books	2867		7 50
June 1	The Boston Book Co.	Books	2868		11 75
June 1	The Bancroft Co.	Books	2869		200 00
June 1	Capital Telephone and Telegraph Co.	Service	2870		3 50
June 1	Tom Scott	Plumbing	2871		8 00
June 1	Capital Furniture Co.	Furniture	2872		16 00
June 1	Capital Transfer Co.	Service	2873		1 80
June 1	The Hicks-Judd Co.	Books	2874		4 00
June 1	Sunset Telephone and Telegraph Co.	Service	2875		23 35
June 1	C. Suter	Shelves and repairs	2876		39 20
June 1	Wm. R. Hall	Repairing furniture	2877		4 00
June 1	Western Union Telegraph Co.	Service	2878		2 14
June 1	Genevieve Green	Salary	2879		200 00
June 1	N. D. Perkins	Salary	2880		150 00
June 1	Amy Hopkins	Salary	2881		125 00
June 1	Jane O'Hare	Salary	2882		30 00
June 1	Nora J. Casey	Salary	2883		50 00
June 1	J. P. Bell Co.	Subscription	2884		5 00
June 1	Dodd, Mead & Co.	Subscription	2885		2 00
June 1	Joseph Wright	Books	2886		7 41
June 1	Thomas Fox, P. M.	Box rent	2887		3 50
June 30	To balance on hand				254 81
				$17,432 45	$17,432 45

DEBITS FOR THE FORTY-NINTH FISCAL YEAR.

1897—July 1	To balance on hand	$254 81
July 3	To warrant	2,562 20
July 31	To warrant	1,929 56
Sept. 8	To warrant	3,008 62
Oct. 20	To J. L. Gillis, salary returned	300 00
Oct. 20	To C. A. Neill, salary returned	300 00
Oct. 2	To warrant	490 01
Oct. 2	To E. D. McCabe, salary returned	250 00
Nov. 1	To warrant	2,011 05
Dec. 1	To warrant	2,270 98
1898—Jan. 4	To warrant	3,005 36
Feb. 1	To warrant	1,870 55
Feb. 1	To Garden and Forest, rebate on subscription	1 44
Feb. 25	To warrant	4,731 75
Mar. 17	To sale of duplicates	2 50
Mar. 20	To sale of duplicates	5 00
Mar. 20	To warrant	855 95
May 9	To warrant	2,185 75
May 13	To Capital Transfer Co., rebate error	2 05
June 6	To warrant	1,523 54
	Total	$27,561 12

CREDITS FOR THE FORTY-NINTH FISCAL YEAR.

Date.	To Whom Paid.	Item.	Voucher	Amount Dr.	Amount Cr.
1897				$27,561 12	
July 3	Genevieve Green	Salary	2888		$200 00
July 3	Genevieve Green	Expenses, S. F.	2889		10 00
July 3	N. D. Perkins	Salary	2890		150 00
July 3	N. D. Perkins	Expenses, S. F.	2891		10 00
July 3	J. L. Gillis	Salary	2892		150 00
July 3	Amy Hopkins	Salary	2893		125 00
July 3	Nora J. Casey	Salary	2894		50 00
July 3	Jane O'Hare	Salary	2895		30 00
July 3	Charles S. Greene	Periodicals	2896		271 50
July 3	The Geological Society of America	Books	2897		40 00
July 3	Frank Shepard	Annotations	2898		26 00
July 3	J. J. Laracy	Books	2899		16 00
July 3	A. J. Wool	Sub., S. F. Examiner	2900		15 60
July 3	William F. Hobe	Sub., S. F. Chronicle	2901		11 70
July 3	The Boston Book Company	Books	2902		5 00
July 3	California Cultivator	Books	2903		4 00
July 3	San Francisco Call	Subscription	2904		3 90
July 3	The Medico-Legal Journal	Subscription	2905		3 00
July 3	Perry, Mason & Co.	Subscription	2906		75
July 3	Sunset Telephone and Telegraph Co.	Service	2907		20 85
July 3	Sunset Telephone and Telegraph Co.	Service	2908		23 05
July 3	H. W. Rivett	Cleaning carpets	2909		25 47
July 3	Wells, Fargo & Co.	Service	2910		23 75
July 3	Union Ice Co.	Ice	2911		48 00
July 3	Mrs. Mary Hale	Books	2912		25 00
July 3	W. B. Saunders	Books	2913		122 75
July 3	Joel Munsell's Sons	Books	2914		146 26
July 3	Bancroft, Whitney & Co.	Books	2915		68 00
July 3	John J. Newbegin	Books	2916		170 00
July 3	The F. A. Davis Co.	Books	2917		40 00
July 3	W. F. Purnell	Books	2918		443 31
July 3	Berlin Photograph Co.	Books	2919		27 00
July 3	Publishers' Weekly	Books	2920		16 00
July 3	The Boston Book Co.	Books	2921		23 82
	Amount carried forward			$27,561 12	$2,345 71

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1897	Amount brought forward			$27,561 12	$2,345 71
July 3	Edward Thompson Co.	Books	2922		6 00
July 3	Wells, Fargo & Co.	Service	2923		6 62
July 3	Chas. Scribner's Sons	Books	2924		12 00
July 3	Appleton & Co.	Books	2925		6 00
July 3	William Doxey	Books	2926		3 50
July 3	Los Angeles Directory Co.	Books	2927		6 00
July 3	H. S. Crocker & Co.	Books	2928		5 00
July 3	L. P. McCarty	Books	2929		3 50
July 3	J. B. Lippincott & Co.	Books	2930		6 00
July 3	C. Denissen	Books	2931		5 00
July 3	Capital Telephone and Telegraph Co.	Service	2932		3 50
July 3	Capital Transfer Co.	Service	2933		3 00
July 3	Thomas Fox, P.M.	Box rent	2934		3 50
July 3	Western Union Telegraph Co.	Service	2935		3 43
July 3	R. O. Cravens	Notary fees	2936		8 00
July 3	C. H. Rave	Repairing locks	2937		19 75
July 3	Daily Record-Union	Subscription	2938		7 80
July 3	Mrs. A. Beard	Books	2939		2 50
July 3	William Wicks	Labor	2940		6 00
July 3	Edward Howell	Books	2941		11 04
July 3	A. Hartleben	Books	2942		10 10
July 3	E. D. McCabe	Postage, expenses	2943		70 00
July 31	Bancroft, Whitney & Co.	Books	2944		37 25
July 31	W. F. Purnell	Books	2945		495 44
July 31	John J. Newbegin	Books	2946		165 00
July 31	The Bancroft Co.	Books	2947		100 00
July 31	The Boston Book Co.	Books	2948		98 22
July 31	Houghton, Mifflin & Co.	Books	2949		56 00
July 31	D. Appleton & Co.	Books	2950		62 00
July 31	West Publishing Co.	Books	2951		40 25
July 31	Edward Thompson Co.	Books	2952		42 00
July 31	Banks & Bros.	Books	2953		12 00
July 31	Lea Bros. & Co.	Books	2954		7 00
July 31	The Engineering News Pub. Co.	Books	2955		2 61
July 31	Homer Wakefield	Books	2956		5 00
July 31	J. Wright	Books	2957		3 02
July 31	Elliott Stock	Books	2958		34 58
July 31	Librairie Hachette & Co.	Books	2959		5 70
July 31	Forest and Stream	Subscription	2960		4 00
July 31	Daily Morning Union	Subscription	2961		5 00
July 31	Sunday Leader	Subscription	2962		3 00
July 31	S. F. Evening Bulletin	Subscription	2963		1 50
July 31	S. F. Evening Report	Subscription	2964		1 50
July 31	Sunset Telephone and Telegraph Co.	Service	2965		15 05
July 31	Capital Telephone and Telegraph Co.	Service	2966		3 50
July 31	Tice & Lynch	Postage	2967		94
July 31	John Breuner	Furniture	2968		22 50
July 31	Locke & Lavenson	Repairs	2969		5 50
July 31	C. H. Rave	Repairing locks	2970		12 50
July 31	W. R. Hall	Repairing furniture	2971		11 25
July 31	Walrath Bros.	Cartage	2972		2 50
July 31	R. O. Cravens	Notary fees	2973		2 50
July 31	Genevieve Green	Salary	2974		200 00
July 31	N. D. Perkins	Salary	2975		150 00
July 31	A. L. Blanchard	Salary	2976		150 00
July 31	Nora J. Casey	Salary	2977		50 00
July 31	Jane O'Hare	Salary	2978		30 00
July 31	R. O. Cravens	Salary	2979		100 00
Sept. 8	Bancroft, Whitney & Co.	Books	2980		63 75
Sept. 8	W. F. Purnell	Books	2981		240 11
Sept. 8	William Doxey	Books	2982		126 94
Sept. 8	Joel Munsell's Sons	Books	2983		23 40
	Amount carried forward			$27,561 12	$4,945 46

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1897	Amount brought forward			$27,561 12	$4,945 46
Sept. 8	Berlin Photo Co.	Books	2984		27 00
Sept. 8	Jas. D. Cockcroft	Books	2985		6 00
Sept. 8	Wm. Wood & Co.	Books	2986		16 00
Sept. 8	John J. Newbegin	Books	2987		220 00
Sept. 8	Edward Thompson Co.	Books	2988		6 00
Sept. 8	John Wiley & Sons	Books	2989		10 46
Sept. 8	D. Appleton & Co.	Books	2990		5 00
Sept. 8	H. T. Jones	Books	2991		7 00
Sept. 8	Mrs. Geo. W. Mayo	Books	2992		3 00
Sept. 8	Wells, Fargo & Co.	Service	2993		30 25
Sept. 8	Sunset Telephone and Telegraph Co.	Service	2994		17 15
Sept. 8	P. A. Byrne	Cleaning carpets	2995		173 40
Sept. 8	Capital Transfer Co.	Service	2996		4 50
Sept. 8	Capital Telephone and Telegraph Co.	Service	2997		3 50
Sept. 8	H. S. Crocker & Co.	Repairs num. mach.	2998		4 50
Sept. 8	Gaylord Bros.	Paper	2999		2 15
Sept. 8	The Herald Publishing Co.	Subscription	3000		4 50
Sept 8	Democrat Publishing Co.	Subscription	3001		5 00
Sept. 8	The Sugar Beet	Subscription	3002		1 00
Sept. 8	Genevieve Green	Salary	3003		200 00
Sept. 8	N. D. Perkins	Salary	3004		150 00
Sept. 8	Amy Hopkins	Salary	3005		125 00
Sept. 8	R. O. Cravens	Salary	3006		100 00
Sept. 8	Nora J. Casey	Salary	3007		50 00
Sept. 8	Jane O'Hare	Salary	3008		30 00
Sept. 8	William Wicks	Labor	3009		21 00
Sept. 8	The Boston Book Co.	Books	3010		182 01
Sept. 8	Genevieve Green	Expenses S. F.	3011		10 00
Sept. 8	Western Union Telegraph Co.	Service	3012		3 00
Sept. 8	A. L. Blanchard	Salary	3013		150 00
Sept. 8	Genevieve Green	Expenses S. F.	3014		10 00
Sept. 8	Amy Hopkins	Salary	3015		125 00
Sept. 8	E. D. McCabe	Salary	3016		250 00
Sept. 8	Mrs. C. A. Neill	Salary	3017		300 00
Sept. 8	J. L. Gillis	Salary	3018		300 00
Oct. 2	Bancroft, Whitney & Co.	Books	3019		39 65
Oct. 2	W. F. Purnell	Books	3020		246 49
Oct. 2	John J. Newbegin	Books	3021		45 00
Oct. 2	William Doxey	Books	3022		44 40
Oct. 2	E. A. Bronson	Books	3023		28 00
Oct. 2	B. F. Stevens	Books	3024		22 03
Oct. 2	Thomas B. Merry	Books	3025		20 00
Oct. 2	James T. White & Co.	Books	3026		10 00
Oct. 2	William Wood & Co.	Subscription	3027		7 50
Oct. 2	The National Provisioner	Subscription	3028		7 50
Oct. 2	West Publishing Co.	Books	3029		6 00
Oct. 2	San Francisco Call	Subscription	3030		5 85
Oct. 2	Lawyers' Coöperative Publishing Co.	Subscription	3031		5 00
Oct. 2	N. J. Stone	Subscription	3032		5 00
Oct. 2	Publishers' Weekly	Subscription	3033		3 10
Oct. 2	S. F. Evening Bulletin	Subscription	3034		1 50
Oct. 2	S. F. Evening Report	Subscription	3035		1 00
Oct 2	Department of Agriculture	Cards	3036		2 00
Oct. 2	The Times Publishing Co.	Subscription	3037		2 00
Oct. 2	Capital Telephone and Telegraph Co.	Service	3038		3 50
Oct. 2	Frank Lyman	Labor	3039		3 00
Oct. 2	Capital Transfer Co.	Service	3040		2 25
Oct. 2	Thomas Fox, P. M.	Box rent	3041		1 00
Oct. 2	Thomas Fox, P. M.	Box rent	3042		2 50
Oct. 2	Genevieve Green	Salary	3043		200 00
Oct. 2	N. D. Perkins	Salary	3044		150 00
Oct. 2	A. L. Blanchard	Salary	3045		150 00
	Amount carried forward			$27,561 12	$8,512 15

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1897	Amount brought forward			$27,561 12	$8,512 15
Oct. 2	Amy Hopkins	Salary	3046		125 00
Oct. 2	R. O. Cravens	Salary	3047		100 00
Oct. 2	Nora J. Casey	Salary	3048		50 00
Oct. 2	Jane O'Hare	Salary	3049		30 00
Oct. 2	Wells, Fargo & Co.	Service	3050		4 74
Oct. 2	Mamie O'Hare	Cleaning library	3051		18 00
Nov. 1	D. P. Elder	Books	3052		380 00
Nov. 1	John J. Newbegin	Books	3053		200 00
Nov. 1	Joel Munsell's Sons	Books	3054		127 58
Nov. 1	The Bancroft Co.	Books	3055		100 00
Nov. 1	W. F. Purnell	Books	3056		51 76
Nov. 1	Robert E. Cowan	Books	3057		52 00
Nov. 1	Library Bureau	Catalogue case	3058		35 00
Nov. 1	West Publishing Co.	Catalogue case	3059		29 25
Nov. 1	Banks & Bros.	Catalogue case	3060		12 00
Nov. 1	Spon & Chamberlain	Catalogue case	3061		7 50
Nov. 1	Edward Thompson Co.	Catalogue case	3062		6 00
Nov. 1	Maria C. N. Lyle	Catalogue case	3063		5 00
Nov. 1	The Engineering Record	Subscription	3064		5 00
Nov. 1	Louis B. Walker	Books	3065		5 00
Nov. 1	The Boston Book Co.	Books	3066		5 00
Nov. 1	American Journal of Insanity	Subscription	3067		5 00
Nov. 1	Geo. H. Richmond & Co.	Books	3068		4 28
Nov. 1	Placer Argus	Subscription	3069		4 00
Nov. 1	Bancroft, Whitney & Co.	Books	3070		120 70
Nov. 1	Maria E. Tifft	Books	3071		3 50
Nov. 1	California Fruit Grower	Subscription	3072		3 00
Nov. 1	American Jersey Cattle Club	Books	3073		3 00
Nov. 1	H. S. Phillips	Books	3074		3 00
Nov. 1	The Craswell Co.	Books	3075		2 50
Nov. 1	R. O. Cravens	Salary	3076		100 00
Nov. 1	R. O. Cravens	Notary fees	3077		2 50
Nov. 1	Capital Transfer Co.	Service	3078		1 00
Nov. 1	Microscopical Publishing Co.	Subscription	3079		2 00
Nov. 1	Dana C. Munro	Books	3080		1 50
Nov. 1	Sunset Telephone and Telegraph Co.	Service	3081		19 85
Nov. 1	Sunset Telephone and Telegraph Co.	Service	3082		21 70
Nov. 1	Capital Telephone and Telegraph Co.	Service	3083		4 25
Nov. 1	E. D. McCabe	Postage and exp's	3084		53 82
Nov. 1	Genevieve Green	Salary	3085		200 00
Nov. 1	N. D. Perkins	Salary	3086		150 00
Nov. 1	A. L. Blanchard	Salary	3087		150 00
Nov. 1	Amy Hopkins	Salary	3088		125 00
Nov. 1	Nora J. Casey	Salary	3089		50 00
Nov. 1	Jane O'Hare	Salary	3090		30 00
Nov. 1	W. S. Green	Expenses	3091		10 00
Dec. 1	W. F. Purnell	Books	3092		292 93
Dec. 1	M. S. McKusic	Books	3093		11 00
Dec. 1	J. W. Randolph Co.	Books	3094		12 61
Dec. 1	William Doxey	Books	3095		235 55
Dec. 1	W. K. Vickery	Pictures	3096		137 25
Dec. 1	H. H. Moore	Books	3097		112 75
Dec. 1	D. P. Elder	Books	3098		85 00
Dec. 1	Bancroft, Whitney & Co.	Books	3099		46 75
Dec. 1	C. Daresi	Books	3100		30 42
Dec. 1	Berlin Photo. Co.	Books	3101		27 00
Dec. 1	Index Medicus	Books	3102		25 00
Dec. 1	Chas. Scribner's Sons	Books	3103		20 00
Dec. 1	Dodd, Mead & Co.	Books	3104		18 00
Dec. 1	D. Appleton & Co.	Books	3105		14 00
Dec. 1	J. L. Jackson	Subscription	3106		7 80
	Amount carried forward			$27,561 12	$12,007 44

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1897	Amount brought forward			$27,561 12	$12,007 44
Dec. 1	Joel E. Clare	Books	3107		6 00
Dec. 1	Edward Thompson Co.	Books	3108		6 00
Dec. 1	The Boston Book Co.	Books	3109		6 00
Dec. 1	Banks & Bros.	Books	3110		6 00
Dec. 1	Bureau of American Republics	Books	3111		5 00
Dec. 1	Lawyers' Coöperative Publishing Co.	Books	3112		5 00
Dec. 1	J. B. Lippincott & Co.	Books	3113		6 00
Dec. 1	Joel Munsell's Sons	Books	3114		5 00
Dec. 1	B. F. Stevens	Books	3315		4 75
Dec. 1	Francis S. Harper	Books	3116		4 75
Dec. 1	The Herald Publishing Co.	Books	3117		4 50
Dec. 1	Zella Allen Dixon	Books	3118		3 64
Dec. 1	Lyan G. Tyler	Books	3119		3 00
Dec. 1	So. Historical Association	Dues	3120		3 00
Dec. 1	Arts for America	Subscription	3121		2 00
Dec. 1	U. S. Dept. of Agriculture	Cards	3122		2 00
Dec. 1	E. D. McCabe	Postage, expenses	3123		62 06
Dec. 1	Wells, Fargo & Co.	Service	3124		15 65
Dec. 1	Sunset Telephone and Telegraph Co.	Service	3125		14 45
Dec. 1	William Wicks	Labor	3126		6 00
Dec. 1	Capital Telephone and Telegraph Co.	Service	3127		4 30
Dec. 1	Western Union Telegraph Co.	Service	3128		3 50
Dec. 1	Capital Transfer Co.	Service	3129		3 25
Dec. 1	Genevieve Green	Salary	3130		200 00
Dec. 1	N. D. Perkins	Salary	3131		150 00
Dec. 1	A. L. Blanchard	Salary	3132		150 00
Dec. 1	Amy Hopkins	Salary	3133		125 00
Dec. 1	R. O. Cravens	Salary	3134		100 00
Dec. 1	Nora J. Casey	Salary	3135		50 00
Dec. 1	Jane O'Hare	Salary	3136		30 00
Dec. 1	C. H. Rave	Repairing locks	3137		26 50
Dec. 1	John J. Newbegin	Books	3138		40 00
Dec. 1	Fred W. Morris	Books	3139		55 13
Dec. 1	James D. Cockcroft	Books	3140		6 00
1898					
Jan. 1	Bancroft, Whitney & Co.	Books	3141		65 25
Jan. 1	The Bancroft Co.	Books	3142		100 00
Jan. 1	W. F. Purnell	Books	3143		143 45
Jan. 1	Joseph Bayan	Books	3144		175 00
Jan. 1	H. H. Moore	Books	3145		121 00
Jan. 1	William Doxey	Books	3146		141 70
Jan. 1	W. K. Vickery	Books	3147		267 50
Jan. 1	John J. Newbegin	Books	3148		130 40
Jan. 1	Berlin Photograph Co.	Books	3149		83 25
Jan. 1	The Boston Book Co.	Books	3150		44 75
Jan. 1	The Robert Clark Co.	Books	3151		34 00
Jan. 1	N. J. Stone Co.	Books	3152		5 00
Jan. 1	B. N. Bugbey	Books	3153		5 00
Jan. 1	Charles Wells Moulton	Books	3154		2 50
Jan. 1	The Carswell Co.	Books	3155		1 00
Jan. 1	Frank A. Prince	Books	3156		1 25
Jan. 1	The Hubbell Publishing Co.	Books	3157		5 35
Jan. 1	William Wood & Co.	Subscription	3158		7 50
Jan. 1	Taylor & Taylor Print. Co.	Co. slips	3159		2 50
Jan. 1	Charles S. Green	Periodicals	3160		408 80
Jan. 1	University of Cal. Mag.	Subscription	3161		1 50
Jan. 1	Physicians' Publishing Co.	Subscription	3162		2 50
Jan. 1	D. Appleton & Co.	Books	3163		8 00
Jan. 1	Land of Sunshine	Subscription	3164		2 00
Jan. 1	George P. Humphrey	Subscription	3165		3 00
Jan. 1	A. J. Wooll	Sub. S. F. Chronicle.	3166		15 60
Jan. 1	A. A. Hobe	Sub. S. F. Examiner	3167		11 70
Jan. 1	San Francisco Call	Subscription	3168		6 70
	Amount carried forward			$27,561 12	$14,918 12

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1898	Amount brought forward			$27,561 12	$14,918 12
Jan. 1	John B. Schnetzler	Sub. S. F. Report	3169		1 50
Jan. 1	John B. Schnetzler	Sub. S. F. Bulletin	3170		1 50
Jan. 1	W. B. Walkup & Co.	Map Mariposa	3171		10 00
Jan. 1	R. O. Cravens	Notary fees	3172		1 50
Jan. 1	J. M. Bassett	File Golden Era	3173		300 00
Jan. 1	Capital Transfer Co.	Service	3174		1 75
Jan. 1	Union Ice Co.	Ice	3175		32 70
Jan. 1	Capital Telephone and Telegraph Co.	Service	3176		3 70
Jan. 1	Wells, Fargo & Co.	Service	3177		11 70
Jan. 1	E. D. McCabe	Postage, expenses	3178		39 81
Jan. 1	Genevieve Green	Salary	3179		200 00
Jan. 1	N. D. Perkins	Salary	3180		150 00
Jan. 1	A. L. Blanchard	Salary	3181		150 00
Jan. 1	Amy Hopkins	Salary	3182		125 00
Jan. 1	R. O. Cravens	Salary	3183		100 00
Jan. 1	Nora J. Casey	Salary	3184		50 00
Jan. 1	Jane O'Hare	Salary	3185		30 00
Feb. 1	Bancroft, Whitney & Co.	Books	3186		103 50
Feb. 1	W. F. Purnell	Books	3187		212 34
Feb. 1	E. W. Bruening	Binding papers	3188		210 25
Feb. 1	John J. Newbegin	Books	3189		75 00
Feb. 1	D. P. Elder	Books	3190		68 50
Feb. 1	W. K. Vickery	Books	3191		47 50
Feb. 1	West Publishing Co.	Books	3192		21 75
Feb. 1	The Boston Book Co.	Books	3193		15 75
Feb. 1	B. Veith	Books	3194		13 00
Feb. 1	The Times-Mirror Co.	Subscription	3195		9 00
Feb. 1	H. S. Phillips	Books	3196		9 00
Feb. 1	B. F. Stevens	Books	3197		7 77
Feb. 1	Harvard Law Review	Subscription	3198		7 50
Feb. 1	Lea Bros. & Co.	Books	3199		7 00
Feb. 1	Edward Thompson & Co.	Books	3200		6 00
Feb. 1	Wasp Publishing Co.	Subscription	3201		5 00
Feb. 1	Astronomical Society of the Pacific	Dues	3202		5 00
Feb. 1	Lawyers' Coöperative Publishing Co.	Books	3203		5 00
Feb. 1	Department of the Interior	Books	3204		4 30
Feb. 1	Banks & Bros.	Books	3205		3 00
Feb. 1	The Banking Law Journal	Subscription	3206		3 00
Feb. 1	Occidental Medical Times	Subscription	3207		2 00
Feb. 1	American Statistical Association	Subscription	3208		2 00
Feb. 1	Elliott Stock	Subscription	3209		2 09
Feb. 1	Spon & Chamberlain	Subscription	3210		1 50
Feb. 1	George B. Stack	Heater, Law Dep't.	3211		48 60
Feb. 1	Sunset Telephone and Telegraph Co.	Service	3212		45 80
Feb. 1	Wells, Fargo & Co.	Service	3213		14 15
Feb. 1	Capital Telephone and Telegraph Co.	Service	3214		3 50
Feb. 1	Thomas Fox, P. M.	Box rent	3215		3 50
Feb. 1	Capital Transfer Co.	Service	3216		3 25
Feb. 1	Genevieve Green	Salary	3217		200 00
Feb. 1	N. D. Perkins	Salary	3218		150 00
Feb. 1	A. L. Blanchard	Salary	3219		150 00
Feb. 1	Amy Hopkins	Salary	3220		125 00
Feb. 1	R. O. Cravens	Salary	3221		100 00
Feb. 1	Nora J. Casey	Salary	3222		50 00
Feb. 1	Jane O'Hare	Salary	3223		30 00
Feb. 1	L. G. Horton	Proofreader on catalogue	3224		75 00
Feb. 1	Genevieve Green	Expenses to S. F.	3225		25 00
Feb. 25	Bancroft, Whitney & Co.	Books	3226		83 90
Feb. 25	W. F. Purnell	Books	3227		321 88
Feb. 25	E. W. Breuning	Binding books, etc.	3228		499 90
	Amount carried forward			$27,561 12	$18,903 51

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1898	Amount brought forward			$27,561 12	$18,903 51
Feb. 25	The Boston Book Co.	Books	3229		64 00
Feb. 25	Joel Munsell's Sons	Books	3230		19 80
Feb. 25	H. S. Phillips	Books	3231		36 00
Feb. 25	P. S. King & Son	Books	3232		32 79
Feb. 25	The Whitaker & Ray Co.	Books	3233		15 00
Feb. 25	C. H. W. Stocking	Books	3234		10 42
Feb. 25	San José Mercury	Subscription	3235		6 00
Feb. 25	Hine Ins. Publishing Co.	Subscription	3236		6 00
Feb. 25	Review Publishing Co.	Subscription	3237		5 00
Feb. 25	Daily Morning Union	Subscription	3238		5 00
Feb. 25	William Doxey	Books	3239		8 00
Feb. 25	J. B. Wrenn	Sac'to Directory	3240		4 00
Feb. 25	Chas. S. Scribner's Sons	Books	3241		4 00
Feb. 25	W. C. Catherwood	Map	3242		1 50
Feb. 25	Spon & Chamberlain	Books	3243		1 50
Feb. 25	Chas. W. Palm & Co.	Citations	3244		1 50
Feb. 25	W. F. Adams	Map and book	3245		1 00
Feb. 25	Richmond & Backus Co.	Subscription	3246		1 00
Feb. 25	American Jersey Cattle Club	Book	3247		1 00
Feb. 25	J. N. Larkin & Son	Printing	3248		11 00
Feb. 25	Wells, Fargo & Co.	Service	3249		16 05
Feb. 28	Sunset Telephone and Telegraph Co.	Service	3250		10 51
Feb. 28	Capital Telephone and Telegraph Co.	Service	3251		3 50
Feb. 28	Capital Transfer Co.	Service	3252		4 50
Feb. 28	B. N. Bugbey	Books	3253		12 00
Feb. 28	Genevieve Green	Salary	3254		200 00
Feb. 28	N. D. Perkins	Salary	3255		150 00
Feb. 28	A. L. Blanchard	Salary	3256		150 00
Feb. 28	Amy Hopkins	Salary	3257		125 00
Feb. 28	R. O. Cravens	Salary	3258		100 00
Feb. 28	Nora J. Casey	Salary	3259		50 00
Feb. 28	Jane O'Hare	Salary	3260		30 00
Feb. 28	L. G. Horton	Proofreading	3261		75 00
Feb. 28	Genevieve Green	Expenses, S. F.	3262		35 00
Feb. 28	Berlin Photograph Co.	Books	3263		54 00
Feb. 28	C. H. Rave	Repairing locks	3264		1 00
Feb. 28	E. D. McCabe	Postage, expenses	3265		41 00
Feb. 28	Amy Hopkins	Extra labor on catalogue	3266		50 00
Feb. 28	Caxton Printing Co.	Printing catalogue	3267		2,428 00
Mar. 28	Capital Telephone and Telegraph Co.	Service	3268		3 50
Mar. 28	Sunset Telephone and Telegraph Co.	Service	3269		31 35
Mar. 28	Wells, Fargo & Co.	Service	3270		3 10
Mar. 28	W. U. Telegraph Co.	Service	3271		3 00
Mar. 28	Genevieve Green	Salary	3272		200 00
Mar. 28	N. D. Perkins	Salary	3273		150 00
Mar. 28	Annie L. Blanchard	Salary	3274		150 00
Mar. 28	Amy Hopkins	Salary	3275		125 00
Mar. 28	R. O. Cravens	Salary	3276		100 00
Mar. 28	Nora J. Casey	Salary	3277		50 00
Mar. 28	Jane O'Hare	Salary	3278		30 00
Mar. 28	E. D. McCabe	Expenses	3279		10 00
May 12	Bancroft, Whitney & Co.	Books	3280		85 55
May 12	Jno. J. Newbegin	Books	3281		155 00
May 12	The Boston Book Co.	Books	3282		14 00
May 12	William Doxey	Books	3283		14 00
May 12	Publishers' Weekly	Books	3284		8 91
May 12	Wm. Wood & Co.	Books	3285		7 50
May 12	D. P. Elder	Books	3286		7 00
May 12	Jas. D. Cockcroft	Books	3287		6 00
May 12	Edward Thompson Co.	Books	3288		6 00
May 12	The Times Pub. Co.	Subscription	3289		4 00
	Amount carried forward			$27,561 12	$23,837 49

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1898	Amount brought forward			$27,561 12	$23,837 49
May 12	Democrat Printing House	Subscription	3290		5 00
May 12	So. Historical Soc.	Subscription	3291		3 00
May 12	U. S. Dept. of Agriculture	Index	3292		2 00
May 12	R. E. Gosnell	Books	3293		1 70
May 12	Elliott Stock	Books	3294		1 09
May 12	The Boston Book Co	Books	3295		330 26
May 12	Wyckoff, Seamans & B.	No. 7 typewriter	3296		120 00
May 12	W. F. Purnell	Books	3297		105 87
May 12	Berlin Photograph Co.	Books	3298		54 00
May 12	West Publishing Co.	Books	3299		53 75
May 12	Bancroft, Whitney & Co.	Books	3300		51 50
May 12	Elder & Shepard	Books	3301		46 50
May 12	Sunset Telephone and Telegraph Co.	Service	3302		40 05
May 12	Frank Shepard	Annotations	3303		22 00
May 12	Edward Thompson Co.	Books	3304		18 00
May 12	B. F. Stevens	Books	3305		17 98
May 12	Banks & Bros.	Books	3306		12 00
May 12	C. Suter	Two cases for fumigating	3307		9 00
May 12	San Francisco Call	Subscription	3308		7 80
May 12	Wells, Fargo & Co.	Service	3309		7 60
May 12	William Doxey	Books	3310		7 00
May 12	Capital Transfer Co.	Service	3311		6 60
May 12	Frank H. Wing	Rubber stamps	3312		6 25
May 12	Kate Mason Rowland	Books	3313		6 00
May 12	Lawyers' Coöp. Pub. Co.	Books	3314		5 00
May 12	D. Appleton & Co.	Books	3315		5 00
May 12	Cleveland Public Library	Subscription	3316		5 00
May 19	Capital Telephone and Telegraph Co.	Service	3317		3 50
May 12	William Briggs	Books	3318		3 14
May 12	Geo. P. Humphrey	Subscription	3319		3 00
May 12	R. O. Cravens	Notary fees	3320		2 50
May 12	Physicians' Pub. Co.	Subscription	3321		2 50
May 12	Joel Munsell's Sons	Books	3322		2 25
May 12	Z. A. Smith	Subscription	3323		2 00
May 12	Dodd, Mead & Co.	Subscription	3324		2 00
May 12	Pacific Rural Press	Subscription	3325		2 00
May 12	David W. Hoyt	Books	3326		1 00
May 12	Geo. H. Randall	Library plans	3327		50 00
May 12	F. L. Coombs	Postage, etc.	3328		6 80
May 12	F. L. Coombs	Expenses	3329		196 30
May 12	Genevieve Green	15 days' salary	3330		100 00
May 12	Amy Hopkins	Salary	3331		125 00
May 12	Nora J. Casey	Salary	3332		50 00
May 12	Thomas Fraser	25 days' salary	3333		125 00
May 12	M. McClure Yount	25 days' salary	3334		83 35
May 12	Frank Rhoads	25 days' salary	3335		62 50
May 12	Jane O'Hare	Salary	3336		30 00
May 12	Annie L. Blanchard	9 days' salary	3337		45 00
May 12	R. O. Cravens	9 days' salary	3338		30 00
May 30	Robert E. Cowan	53 volumes Alta	3339		265 00
May 30	Bancroft, Whitney & Co.	Books	3340		79 25
May 30	John Breuner	Desk and chair	3341		48 00
May 30	B. N. Bugbey	Books	3342		35 00
May 30	The Boston Book Co.	Books	3343		33 52
May 30	Houghton, Mifflin & Co.	Books	3344		25 00
May 30	B. F. Stevens	Books	3345		21 04
May 30	D. Appleton & Co.	Books	3346		18 00
May 30	The Boston Book Co.	Books	3347		17 46
May 30	Frank H. Wing	Stamps	3348		11 95
May 30	San Francisco Chronicle	Subscription	3349		11 70
May 30	Library Bureau	Book	3350		14 25
May 30	H. S. Crocker & Co.	Supplies	3351		7 40
May 30	Sacramento Daily Bee	Subscription	3352		6 60
May 30	Edward Thompson Co.	Books	3353		6 00
	Amount carried forward			$27,561 12	$26,315 45

CREDITS FOR THE FORTY-NINTH FISCAL YEAR—Continued.

Date.	To Whom Paid.	Item.	Voucher	Amount. Dr.	Amount. Cr.
1898	Amount brought forward			$27,561 12	$26,315 45
May 30	Sunset Telephone and Telegraph Co.	Service	3354		6 00
May 30	Hevener, Mier & Co.	Frames	3355		5 80
May 30	Macmillan & Co.	Subscription	3356		5 00
May 30	J. P. Bell Co.	Subscription	3357		5 00
May 30	Frank Shepard	Annotations	3358		5 00
May 30	Capital Telephone and Telegraph Co.	Service	3359		3 50
May 30	San Francisco Bulletin	Subscription	3360		3 00
May 30	San Francisco Report	Subscription	3361		3 00
May 30	California Fruit Grower	Subscription	3362		2 00
May 30	Harvard Law Review	Subscription	3363		2 50
May 30	Capital Transfer Co.	Service	3364		1 50
May 30	Spon & Chamberlain	Books	3365		1 50
May 30	Western Union Telegraph Co.	Service	3366		27
May 30	J. F. Slater	Book	3367		4 75
May 30	F. L. Coombs	Expenses, etc.	3368		148 55
May 30	Thomas Fraser	Salary	3369		150 00
May 30	Amy Hopkins	Salary	3370		125 00
May 30	M. McClure Yount	Salary	3371		100 00
May 30	Mrs. F. L. Coombs	Salary	3372		150 00
May 30	Nora J. Casey	Salary	3373		50 00
May 30	Frank Rhoads	Salary	3374		75 00
May 30	N. D. Perkins	9 days' salary	3375		45 00
May 30	Jane O'Hare	Salary	3376		30 00
	To balance on hand				323 30
				$27,561 12	$27,561 12

SUMMARY OF EXPENDITURES FOR THE 48TH AND 49TH FISCAL YEARS.

Items.	Forty-eighth.	Forty-ninth.	Total.
Books	$7,670 87	$10,152 50	$17,823 37
Periodicals and subscriptions	975 77	1,002 51	1,978 28
Telephone service	316 15	305 86	622 01
Expressage	137 11	117 56	254 67
Shelves and furniture	182 20	105 50	287 70
Postage and telegraphing	102 40	98 34	200 74
Salaries	6,630 00	8,895 85	15,525 85
Miscellaneous expenses	1,163 14	3,278 21	4,441 35
Printing catalogue		2,428 00	2,428 00
Totals	$17,177 64	$26,384 33	$43,561 97

STATEMENT SHOWING THE CONDITION OF THE STATE LIBRARY FUND.

July 1, 1896, to June 30, 1898.

Dr.					Cr.
1896.			1898.		
July 1	To balance on hand	$12,449 69	June 30	By warrants issued for the forty-eighth and forty-ninth fiscal years	*$43,622 46
1898.					
June 30	To fees from the Secretary of State for forty-eighth and forty-ninth fiscal years	40,142 65	June 30	By balance	8,969 88
		$52,592 34			$52,592 34

*The difference of $60 49 between actual expenditures and amount of warrants issued is shown by bank balance.

STATE OF CALIFORNIA,
County of Sacramento.

I, Frank L. Coombs, Secretary of the Board of Trustees of the California State Library, do solemnly swear that the foregoing is a true and correct statement of expenditures of the State Library for the forty-eighth and forty-ninth fiscal years, July 1, 1896, to June 30, 1898.

FRANK L. COOMBS.

Subscribed and sworn to before me, this 14th day of September, 1898.

[SEAL.]

THOS. FRASER,
Notary Public.

BOOKS AND PAMPHLETS RECEIVED BY EXCHANGE OR DONATION.

JULY, 1896, TO JULY, 1898.

The asterisk (*) denotes numerous pamphlets.

Names.	Volumes.	Pamphlets.
Aguilar Free Library		2
Alabama: Secretary of State	6	
State Geologist		2
State Librarian	6	
Alameda County Clerk	1	
Alpine County Clerk		1
Amador County Clerk		1
American Anti-Vivisection Society		1
American Bar Association	2	
American Conference for International Arbitration	1	
American Pharmaceutical Association	2	
American Society of Civil Engineers	1	
American Type-Founders Co.	1	
Argentine Republic		1
Arizona: Territorial Librarian	2	
Arkansas: Secretary of State	10	
Balch, T. W.	2	
Bell, A. M.	3	
Boston Parents' Educational Association for Deaf Children		4
Boston Public Library	2	10
British Columbia: Legislative Library	2	8
Brooklyn (N Y.) Public Library		2
Civil Service Commission		2
Brown, Mrs. L. H.	3	15
Butte County (Cal.) Clerk		1
Calaveras County Clerk		2
California State Publications	88	*
California: Legislature	22	
Secretary of State	44	
State Medical Society	5	
Supreme Court	133	
Academy of Science	2	9
Canada: Department of the Interior	1	
Government Printer	2	
Royal Society	2	
Chicago Public Library		17
University	1	
Chili: Minister of the Interior	4	
Cincinnati: Chamber of Commerce	3	
Public Library		2
Cleveland Public Library		1
Colby University		5
Colorado: Agricultural Experiment Station		10
Secretary of State	17	
State Library	2	
Superintendent of Public Instruction		4
Columbia University		2
Colusa County Clerk		1
Connecticut: State Library	5	
Conner, P. S. P.	1	
Contra Costa County Clerk		2
Cornell University	2	
Cust, R. N.	5	
Delaware: State Library	1	

BOOKS AND PAMPHLETS—Continued.

Names.	Volumes.	Pamphlets.
Del Norte County Clerk		1
Denissen, C.	1	1
El Dorado County Clerk		1
Enoch Pratt Free Library		2
Fairmount Park Association		5
Field Columbian Museum		24
Firenze (Italy) Biblioteca Nationale Centrale	2	10
Florida: Clerk of the Supreme Court		1
Secretary of State	7	
France: Minister of Agriculture		12
Franciscan Fathers (Sacramento)	1	
French, A. D. Weed	1	
Fresno County Clerk		1
George, Rev. A.	4	
Georgia: State Library	7	
Glenn County Clerk		1
Green, J. L.	1	1
Green, S. A.		15
Hartford Theological Seminary	1	1
Harvard University	2	2
Hawaiian Supreme Court	13	15
Historical Society of Southern California	1	
Humboldt County Clerk	1	
Idaho: Secretary of State	3	
Illinois: Secretary of State	17	
Society of Colonial Wars		1
Indiana: State Library	22	
Historical Society		4
Inyo County (Cal.) Clerk		1
Iowa: Secretary of State	2	
State Library	14	
Jersey City Public Library		2
John Crerar Library		3
John F. Slater Fund for Education of Freedmen		6
Kansas: Commissioner of Labor	1	
Secretary of State	2	
State Library	15	1
State Bar Association	1	
Kentucky: State Library	12	
Kern County (Cal.) Clerk		1
Kimball, Maj. G. G.	1	
Kincaid, H. R.		1
Kings County (Cal.) Clerk		1
Lake County Clerk		1
Langley, S. P.	1	
Lassen County Clerk		2
Leach, Josiah A.	1	
Leland Stanford, Jr., University	2	11
Louisiana State Library	5	2
McCormick Machine Harvesting Co.	1	
Madera County Clerk		2
Maine: State Library	26	9
Genealogical Society		1
Marin County Clerk		1
Mariposa County Clerk		1
Maryland Historical Society	2	
State Library	8	
Massachusetts: Secretary of the Commonwealth	45	
Mechanic's Institute (S. F.)		3
Mendocino County Clerk		2
Mercantile Library (N. Y.)		2
Merced County Clerk		1
Merry, W. L.		1
Michigan: State Library	73	71
Minnesota: State Library	13	1
Mississippi: Secretary of State	11	
State Library	2	1

BOOKS AND PAMPHLETS—Continued.

Names.	Volumes.	Pamphlets.
Missouri: Secretary of State	34	----
Modoc County Clerk	----	1
Mono County Clerk	----	1
Monterey County Clerk	----	2
Montana: Secretary of State	3	----
State Library	3	----
Mumm & Co.	1	----
Napa County Clerk	----	1
National Civil Service Reform League	2	----
National Conference for Good City Government	1	----
National Divorce Reform League	1	----
Nebraska: State Library	2	16
Nevada County (Cal.) Clerk	----	2
Nevada: Secretary of State	8	----
Newark (N. J.) Free Public Library	----	2
New Hampshire: State Library	7	----
New Jersey: State Library	19	12
New Mexico: Department of the Interior	1	----
Legislative Library	6	----
Secretary of the Territory	2	----
New South Wales	14	----
New York: State Library	151	63
New York City: Bar Association	2	----
Public Library	----	18
North Carolina: Bureau of Labor Statistics	1	1
Governor	1	----
Secretary of State	4	----
State Library	2	----
North Dakota: Secretary of State	6	5
State Library	1	----
Oberlin College Library	----	9
Ohio: Secretary of State	1	----
State Library	32	10
State Bar Association	2	----
Oklahoma Territory	2	----
Orange County (Cal.) Clerk	----	1
Oregon: Secretary of State	5	----
Weather Bureau	1	----
Pennsylvania: State Library	47	34
Philadelphia College of Pharmacy Association	2	3
Free Library	----	1
Indian Rights Association	----	6
Placer County Clerk	----	2
Platt, F.	----	1
Plumas County Clerk	----	1
Poor, H. V.	1	----
Pratt, C. and F.	1	----
Pratt Institute	----	2
Princeton University	----	4
Quebec Board of Health	1	----
Rea, G. B.	1	----
Rhode Island: Register of Vital Statistics	1	----
Secretary of State	6	9
State Board of Health	1	----
Riverside County Clerk	----	1
Runk, E. J.	1	----
Sacramento City Trustees	1	----
Sacramento County Clerk	----	1
St. Ignatius College	----	2
St. Louis: Law Library Association	1	----
Merchants' Exchange	----	1
Mercantile Library Association	----	3
Public Library	----	2
Salem (Mass.) Public Library	----	3
San Benito County Clerk	----	1
San Bernardino County Clerk	----	2
San Diego County Clerk	----	2

BOOKS AND PAMPHLETS—Continued.

Names.	Volumes.	Pamphlets.
San Francisco: Auditor	1	
Board of Health	2	24
Board of Supervisors	4	
Farmers' Club		1
Free Public Library	4	3
Produce Exchange		2
Registrar of Voters	18	
San Joaquin County Clerk		2
San Luis Obispo County Clerk		2
San Mateo County Clerk		1
Santa Barbara County Clerk		1
Santa Clara College		2
Santa Clara County Clerk		1
Santa Cruz County Clerk		1
Seattle Public Library		2
Shasta County Clerk		1
Sierra County Clerk		2
Siskiyou County Clerk		1
Smithsonian Institute	17	8
Solano County Clerk		2
Sonoma County Clerk		2
Sons of the American Revolution (San Francisco)		1
South Australia	2	
South Carolina: State Library	15	
South Dakota: Secretary of State	7	
Stanislaus County Clerk		1
Stemer, B. C. and L. H.	1	
Sutter County Clerk		2
Tehama County Clerk		1
Tennessee: State Library	7	
Texas: Secretary of State	10	2
Thompson, R. A.	2	
Trinity County Clerk		2
Tulare County Clerk		1
Tuolumne County Clerk		1
United States: Bureau of Education	5	1
Bureau of Labor	5	12
Bureau of Pensions		1
Department of Agriculture	1	
Department of the Interior		1
Department of Justice	3	
Department of State	13	
Department of the Treasury	4	
Department of War		3
Director of the Mint	6	
Interstate Commerce Commission	6	
Life Saving Station	1	
Naval Observatory	1	
Patent Office	29	
Superintendent of Coast and Geodetic Survey	1	
Superintendent of Documents	270	*
University of California	4	10
University of California: Department of Agriculture	2	
Department of Geology		4
University of Pennsylvania	2	
University of Vermont		1
Utah: Secretary of State	5	
Territorial Librarian	2	
Valentine, J. J.	2	
Ventura County Clerk		1
Vermont: State Library	22	23
Virginia: State Library	9	
State Bar Association	1	
Washington: Secretary of State	5	
Webb, W. H.	2	
West Virginia: State Library	4	
White, Hon. S. M.		4

Books and Pamphlets—Continued.

Names.	Volumes.	Pamphlets.
Winthrop, R. C.	1	------
Wisconsin: State Library	8	------
Wyoming: Secretary of State	2	------
Historical Society	1	------
Yale University	3	------
Yolo County Clerk	------	1
Yuba County Clerk	------	2

THIRD BIENNIAL REPORT

OF THE

BOARD OF TRUSTEES

OF THE

PRESTON SCHOOL OF INDUSTRY

(AT IONE).

JULY 1, 1896, TO JUNE 30, 1898.



SACRAMENTO:
A. J. JOHNSTON, : : : : SUPERINTENDENT STATE PRINTING.
1899.

BOARD OF TRUSTEES.

Hon. E. M. PRESTON, *President*	Nevada City
Hon. L. J. MADDUX	Modesto
Dr. F. D. TYRRELL	Sacramento

LIST OF EMPLOYES.

D. S. Hirshberg	Superintendent	$2,500 00
B. T. K. Preston	Secretary	1,200 00
Timothy Lee	Assistant Superintendent	1,200 00
H. H. Budd	Supervisor	900 00
R. M. Blair	Military Instructor and Assistant Commissary	900 00
Miss M. E. Traner	Commissary	900 00
Harry L. Hudson	Electrician and Engineer	900 00
Lewis Lamb	Carpenter and Assistant Company Officer	900 00
Thos. F. Griffin	Teacher and Assistant Company Officer	900 00
W. L. Tull	Blacksmith, and Captain Company "C"	840 00
Henry Harris	Captain Company "A"	780 00
Chas. Ashton	Shoemaker and Assistant Company Officer	780 00
Thos. F. Gartlin	Farmer	780 00
C. N. Tharsing	Horticulturist	780 00
G. C. Winterberg	Tailor and Assistant Company Officer	780 00
Joseph Sibole	Stockman	720 00
J. B. Costello	Bandmaster and Assistant Company Officer	720 00
J. H. Parker	Captain Company "B"	720 00
B. H. Mace	Ditch Tender	630 00
Miss Z. Turner	Nurse and Dormitory Matron	600 00
Hugh P. Cox	Captain Nightwatch	600 00
Chas. Joses	Teamster	540 00
Geo. H. Dunlap	Mechanic and General Utility Man	540 00
James M. Amick	Superintendent Laundry	540 00
Mrs. L. Young	Cook Officers' Mess	480 00
Mrs. May Meany	Teacher	480 00
Miss E. Leeson	Stenographer and Teacher	480 00
A. J. Wood	Watchman	480 00
J. S. Phillips	Watchman	480 00
B. H. Foreman, M.D.	Physician and Surgeon	360 00
Mrs. D. S. Hirshberg	Matron	360 00
Mrs. H. H. Budd	Assistant Matron and in charge Mending	360 00
Mrs. C. W. Swain	Supervisor Halls and Offices	360 00
Mrs. A. S. Power	Supervisor Dormitories	360 00
Miss M. E. Orr	Supervisor Boys' Dining Room	360 00
Mrs. J. S. Phillips	Supervisor Officers' Dining Room	360 00
Miss R. Kennedy	Teacher	360 00
Joseph Sanborn	Cook Boys' Mess	180 00
P. L. Biddle	Baker	180 00

REPORT.

To Hon. James H. Budd, *Governor of California:*

Sir: We herewith submit our biennial report for the term ending June 30, 1898, together with the reports of the Superintendent, the Secretary, the Attending Physician, and that of the expert accountant. You will observe that the number of inmates reached its maximum early in the year 1897, just as the various county governments of the State were beginning to feel the effects of the $11 per month tax which the law now imposes on each county for each boy committed to the School from such county.

Since that time there has been a remarkable decrease in the number of commitments to the School. During the same period there has been quite an increase in the number of boys who have been sentenced to the penitentiaries. Under the present law, it is less expensive for the counties to send their youthful law-breakers to the penitentiaries than it is to send them to the reformatories.

This tax of $11 per month for each inmate committed from a county has a direct tendency to defeat the purpose for which the reformatory was created—which purpose was to *keep the boys out* of the *penitentiary*. We respectfully recommend a repeal of the law imposing this special tax, for the reason that under the general law each county pays its just and equitable tax for the maintenance of the reformatory.

We ask your careful perusal of that portion of the report of the Superintendent relating to the "indeterminate sentence" of the inmates. Our experience and observation have convinced us that the work of reformation can be more effectually accomplished when the term of a boy's detention at the School is to be determined by his deportment and his effort at reformation, rather than by the order of the court of commitment. We recommend that the law be so amended that all future commitments shall be under the indeterminate sentence. Under the operation of the present law, a large majority of the inmates who have received an honorable discharge have, for meritorious conduct, been dismissed before the expiration of their respective terms of commitment. Under the proposed indeterminate sentence, the term of each boy's detention would depend upon his own deportment and reformation, and would thus afford a direct incentive for reformation that he might thus regain his freedom.

Our water supply for power and irrigation is obtained from Sutter Creek. The water is highly charged with sand and mud. We have endeavored to prevent this sediment from reaching the storage reservoir by the construction of sand-boxes along the line of the ditch, and by various other means, and have thus kept thousands of tons of sediment from reaching the reservoir, but our efforts to protect it from injury have been only partially successful. The muddy water is gradually depositing a sediment on the bottom of the reservoir, and is thus steadily diminishing its storage capacity. A settling reservoir is an imperative necessity, if we are to preserve this valuable water system. The State already owns the site for such a reservoir and should appropriate sufficient money for the construction of a settling reservoir, with a liberal margin for the removal of the deposits of mud and sand which have accumulated in the storage reservoir.

An unsuccessful effort was made at the last session of the Legislature to secure an appropriation for these purposes.

We also need an appropriation for the construction of a fence along the road in front of the premises. The fence now inclosing the premises is in a most dilapidated condition and is of such rude material and construction as to be no credit to the State.

For further information relative to the several departments of the School and of their progress and requirements we respectfully refer you to the accompanying report of the Superintendent.

We submit the following figures as representing the appropriations which we will need for conducting the affairs of the School for the next two years:

Salaries	$55,000 00
Support	70,000 00
Lumber and fencing	3,500 00
Refrigerating plant	1,500 00
Library and tools	1,000 00
Boiler for heating buildings	1,500 00
Settling reservoir and repairs of water system	3,000 00

Respectfully submitted.

E. M. PRESTON,
L. J. MADDUX,
F. D. TYRRELL,
Board of Trustees of the Preston School of Industry.

WATERMAN, November 5, 1898.

REPORT OF SUPERINTENDENT.

To the Honorable Board of Trustees of the Preston School of Industry:

GENTLEMEN: I have the honor to present herewith the Third Biennial Report of the School. Since the last Biennial Report was made, E. Carl Bank was succeeded by Dr. E. S. O'Brien, as Superintendent, and the last named gentleman was succeeded by the undersigned, January 1, 1898.

In accordance with leave of absence obtained from your honorable body, I went East in January, 1898, and visited the State Reform School at Lansing, Mich., and the Reformatory at Morganza, Penn., both of which are considered model institutions, and while there I saw and observed much that aided in an intelligent management of the School.

I cannot permit the opportunity to pass without expressing my sincere appreciation of kindness extended and courtesies shown by Mr. St. John, Superintendent at Lansing, Mich., and Mr. Quay, Superintendent at Morganza, Penn.

IMPROVEMENTS.

The cellar dug and left incomplete by my predecessor was finished, and a substantial two-story brick structure erected, largely by the aid of the cadets of the School. The building is used for cellar purposes, commissary store-room and office, and in the upper story are provided six airy meditation rooms.

A one-story two-room wooden building was erected for the horticultural department, which has proven invaluable for the care and protection of tools, implements, etc., and for the preservation of seeds, plants, etc. It is contemplated that a horticultural exhibit of the products of this department will be placed therein.

A large and commodious blacksmith shop was erected to the right of the power-house. The shop consists of two rooms, in one of which blacksmithing work proper is done, and in the other wheelwright work.

The carpenter shop, located in the trades building, was changed by adding thereto the space heretofore reserved for the blacksmith shop, which was unsuited for that purpose, and much better adapted to the use of which it has been put. Necessary machinery has been placed in position, so that now the shop is well equipped.

The unfinished basement of wagon and tool house was greatly im-

proved by placing thereunder a brick wall, so that the building is now free from the danger of falling down, which threatened it.

The pipe crossing the Sutter Creek road, about a mile and a half from the School, was found to be in a dangerous condition, and in compliance with permission and authority obtained from your honorable body, nine hundred feet of No. 14 gauge 11-inch double-riveted and double-dipped pipe was placed in position, to take the place of the wornout pipe in the ground, and covered with about twenty-four inches of dirt. This is believed to be a most important improvement, which ordinarily would have involved an expenditure of about $1,000, and for which the total expense incurred was about $450.

The carpets of the Administration Building, which had not been touched for four years, were taken up and thoroughly cleaned and renovated, contributing to their lasting quality, as well as to the health and comfort of the inmates.

The farm implements and agricultural machinery were found to be in a dilapidated condition, and much work in the direction of repairs through the blacksmith shop has been accomplished; much yet remains to be done. A farm wagon with one spoke missing in one of the wheels was allowed to go without repair for two years.

My predecessor built an effective dam or bulkhead to prevent the water of Mule Creek from overflowing the land, and rendering it unfit for use. This is a beneficial improvement, and will shortly be strengthened by planting willows and other trees alongside of it to contribute to its strength and efficiency.

Heretofore all the boys have been compelled to use one watercloset in common, and that this was an evil, it required no expert to discover. Recently a separate closet was put in Company "C" basement, which said company is composed of the younger boys of the School.

A new division barbed wire fence was built on the Rendell Ranch property—a much needed improvement.

A new system of six arc electric lights was put in, which will result in saving about eleven twelfths of the expense of maintaining these lights.

Three improved sand-boxes were erected on the ditch leading from Sutter Creek to the reservoir, the use of which prevents tons of sand and dirt from being carried into the reservoir. Two of these boxes are 30 feet long and the other 40 feet in length, and all work admirably.

A well-equipped barber shop was recently established, where the useful trade of barber is being rapidly learned.

A pig pen of about an acre in area was recently built.

The chicken yard was greatly enlarged and improved, and an additional substantial chicken-house erected.

Several wornout or rotten wooden manholes connected with the sewer or pipe system have been taken out and replaced by brick manholes.

The matter of supplying the building with water for domestic purposes has been in the past a source of annoyance. Formerly a spring on the ranch was resorted to, and later water was hauled from town in a wagon. For the past year or more the spring water has been used, but had to be conveyed by wagon from the power-house to the building. This method required the services of two boys and four horses for a portion of each day. It was recommended to the Board that a pump be erected at the power-house and the water pumped up to the building, and that the apparatus used to run the pump could also be utilized for an air whistle, which could be sounded to notify the neighborhood of escapes. The plan met with the approval of the Board, and has been put into operation and works admirably.

REPORTS AND RECORDS.

It was found that the various departments of this School kept no systematic record of the work accomplished. The employés in charge were requested to keep records in books provided for that purpose, and there has been a compliance with the request, and any information desired can be promptly obtained.

Commencing July 1, 1898, a new or additional system of reports will be put into use. The present system consists of daily reports relating principally to conduct of cadets, but containing little of an industrial character. The new form will be ruled to last a month, giving each day's accomplishment, and also a summary of the month's work—giving in detail cost of department, labor performed, supplies used, and articles produced.

The several reports of each department will be bound in separate volumes biennially, and will thus be preserved as a detailed and comprehensive report of the operations of such department.

FARM.

There were 17 horses in all on the farm during the last fiscal year; 15 of which belonged to the State and 2 of which did not and were worked for their keeping. Eight horses have been added by purchase and one died, making a total of 24 in use at present, 22 of which are State property. The horses recently purchased are in good condition, but the others are in fair condition only.

There has been no grain raised on the farm in the past two years, as the land constituting the original purchase was not well adapted for raising grain.

The Rendell Ranch, the purchase of which was lately consummated, affords better opportunity for results in this direction, and an effort to

raise considerable grain will be made. The number of acres of land heretofore tilled was about 100.

The amount of hay produced last year was 75 tons, and the amount produced this year was 116 tons. It is to be remembered that this was an exceptionally dry year, and if irrigation had not been largely resorted to the crop would have been much smaller. Many high places could not be reached by irrigating ditches, and in these spots the yield was comparatively nothing.

The acreage which will be put in hay, grain, and alfalfa for the coming year, will approximate about 250. Much of the land is adapted for grazing purposes only, and attempts to raise crops would prove failures. We have about 9 acres of alfalfa, which will be increased this year. The low land of the farm is what is termed sour land, and has to be drained by ditches before it is fit for use. The drainage ditches can be used for irrigating ditches in summer.

Another difficulty is the prevalence of wild morning-glory, which can only be removed, after it has taken hold of the land, by constant cultivation and work. The difficulty will, however, be overcome.

The land composing the farm is made up of different kinds of soil, and some care and judgment in the selection of grasses has to be exercised. Efforts will be put forth to do something with timothy, Italian rye grass, and red-topped clover.

About 45 tons of grain were consumed on the farm the past year. The corn product of the farm was about 6 tons, and about 50 tons of pumpkins per year.

The farm utensils, implements, etc., have been allowed to run down very much in the past two years, but, as stated in another part of this report, this is being remedied as rapidly as possible.

HORTICULTURAL DEPARTMENT.

One of the most interesting departments of the school, and the one for which the cadets have a decided preference, is horticulture. Besides, it is one of the most useful in producing truck for table and other use.

The garden improvements for year ending June 30, 1897, consisted in lawn around Administration Building, nursery garden containing hotbeds, propagating beds, and general nursery stock, and about an acre of strawberries and small vegetables.

The entrance avenue has been improved and widened by this department, hitching posts erected, and the ground around the building leveled and filled in. Two lawns in front of the building have been planted, and trees from nursery have been planted on side hills around building, contributing greatly to the beauty of premises.

Artistic rock work and terraces were constructed and interspersed with flowers, shrubs, etc.

Products for Fiscal Year Ending June 30, 1897.

Squash	100 tons	$3 00
Potatoes	250 sks.	137 50
Beets	1 ton	20 00
Onions	250 lbs.	25 00
Beans	10 sks.	10 00
Carrots	1 ton	20 00
Cucumbers	60 sks.	30 00
Tomatoes	3 tons	45 00
Lettuce	260 doz.	13 00
Radishes	450 doz.	22 50
Celery		12 50
Pumpkins	25 tons	125 00
Cabbage	1 ton	25 00
Plums	500 lbs.	10 00
Apricots	300 lbs.	6 00
Total		$504 50

For the year ending June 30, 1898, we have under cultivation for garden purposes 70 acres, an increase of 20 acres over last year. It is divided into the following gardens: Twenty acres in orchard, 2 acres in orange grove, 6 acres in grapes, 2 acres in berries and flowers, and the remaining 40 acres in potatoes, melons, corn, pumpkins, and other vegetables.

Much time and work have been devoted to extension and improvement of new land and the planting of new and replacing old trees; horticultural building erected and fence around orchard repaired. Have made about ten barrels of pickles, and expect to have about twenty-five before season closes.

Products for Year Ending June 30, 1898.

Potatoes	200 sks.	$130 00
Beets	10 tons	200 00
Parsnips	15 sks.	11 75
Onions	2 tons	40 00
Carrots	10 tons	150 00
Cucumbers	95 sks.	169 50
Tomatoes	8 tons	120 00
Green peas	14 sks.	15 75
Lettuce	460 doz.	23 00
Radishes	500 doz.	25 00
Pumpkins		75 00
Cabbage	4 tons	80 00
Strawberries	2,200 lbs.	110 00
Blackberries	400 lbs.	32 00
Plums	750 lbs.	150 00
Apricots	600 lbs.	12 00
Total		$1,344 00

STOCK DEPARTMENT.

Attention is respectfully directed to this important and interesting department, where the possibilities for profitable effort are great. Every exertion is being put forth so that this important industry shall be the means of saving considerable expense to the institution in the way of providing pork, lard, butter, eggs, etc.

Some animal or animals got into the chicken yard last year and destroyed about ninety chickens.

A species of hog cholera broke out among the pigs, and some thirty odd died; precautions against a recurrence have been taken.

The department has been placed in competent and reliable hands, and good results are confidently looked for.

There are on hand at present 24 large hogs and 24 nice pigs. The pigs are of the Poland-China and Berkshire breeds. It has been found from careful observation and some tests made that the Poland-China boar crossed with Berkshire sow is the more profitable for us, as their net weight at eighteen months is from 350 to 500 pounds, while that of smaller breeds will rarely net one half that, with same feed and care.

The cattle consist principally of Fresian-Holstein breed, but it is thought that more satisfactory results can be produced by crossing with Jersey or Durham. Some experiments on these lines will be made, and satisfactory results are confidently predicted.

We succeeded in hatching out some 475 chicks this season. For 1897, 400 dozen eggs were produced, and for 1898, 450 dozen.

The following tables are considered interesting enough to accompany this report:

Milk Report for 1897.

	Number of Pounds for Year.	Number of Gallons for Year.	Value of Each Cow.
Aggie	9,873	1,234½	$197 46
Lakeside	9,873	1,234⅛	197 46
Pearline	8,616	1,077	172 32
Flores	9,487	1,185⅞	198 88
B. Queen	9,197	1,149⅝	184 00
Flossie	7,435	929⅜	148 76
Blue Bell	6,197	774⅝	124 04
J. Queen	1,076	134½	21 60
Blossom	5,530	691½	55 34
Ida	7,596	949½	152 00
Roan	7,192	899	143 84
Daisy No. 1	6,563	420⅜	131 30
Kate	3,405	425⅝	68 20
Lulu	6,675	834⅜	133 56
Mayflower	3,098	449½	71 96
Susie	7,180	695	143 60
Sarah	5,975	746⅞	119 64
Mollie	3,495	436⅞	70 04
Betsy	5,957	744⅝	119 24
Daisy No. 2	277	34⅝	5 64
Maud	4,548	568½	91 10
Hannah	4,527	565⅞	90 68

Amount of bran fed in 1897 68,858 lbs.
Amount of hay fed in 1897 81,000 lbs.

Milk Report for 1898.

	Number of Pounds for Year.	Number of Gallons for Year.	Value of Each Cow.
Aggie Rearing calves.			
Lakeside	7,469	937	$149 98
Pearline	7,563	945¾	151 32
Flores	8,783	1,097⅞	175 80
B. Queen	8,175	1,021⅞	163 64
Flossie	3,439	429⅞	68 82
Minnie	4,222	527¾	82 56
Blue Bell	8,920	1,115	178 20
J. Queen	5,851	731⅜	117 08
Blossom	7,336	917	146 72
Ida	6,172	771½	123 52
Roan	8,461	1,057⅝	169 32
Daisy No. 1	7,571	946⅜	151 48
Kate	6,897	862⅛	137 96
Lulu	1,065	133⅛	21 32
Mayflower	7,508	938⅝	150 24
Sarah	2,903	362⅞	58 20
Mollie	2,129	266¼	42 60
Betsy	2,163	270⅜	43 32
Daisy No. 2	6,864	858	137 28
Maud	7,869	983⅝	157 48
Hannah	4,022	502¾	80 50
Maggie	6,454	806¾	129 20
Deer	7,217	902⅛	144 36
Irene	3,051	381⅜	61 08
Josephine	2,217	277⅛	44 36
Marian	1,935	241⅞	38 84
Ione	1,939	242⅜	38 92

Amount of bran fed in 1898 65,735 lbs.
Amount of hay fed in 1898 78,500 lbs.

Cattle.

Number of cows on hand June 30, 1896	18	Number of cows on hand June 30, 1897	26
Calves born	17	Calves born	26
Calves sold	12	Calves raised	7
Calves died	1	Calves sold	15
Cows bought	10	Calves died	4
Cows sold	2	Cows bought	0
Cows died	1	Cows sold	0
Heifer came in	1	Cows died	4
		Heifers came in	10

Number of cows on hand June 30, 1898, 32.

Chickens.

Number of chickens on hand June 30, 1896	50	Number of chickens on hand June 30, 1897	40
Number of chickens raised	150	Number of chickens raised	475
Number of chickens died	20	Number of chickens died	50
Number of chickens killed	90	Number of chickens killed	25
Number of chickens consumed	50	Number of chickens consumed	80
Number of chickens sold	0	Number of chickens sold	0
Number of eggs produced	400 doz.	Number of eggs produced	450 doz.

Hogs.

Number of hogs on hand June 30, 1896	38	Number of hogs on hand June 30, 1897	42
Number of hogs raised	10	Number of hogs raised	10
Number of hogs died	34	Number of hogs died	34
Number of hogs sold	2	Number of hogs sold	2
Number of hogs consumed	3	Number of hogs consumed	3
Number of hogs purchased	11	Number of hogs purchased	11

CARPENTRY DEPARTMENT.

To attempt to embody in detail the work accomplished during 1897 would be an impossibility. Especially would this apply to repairing done, which consisted of every conceivable thing used about the institution. Many changes and betterments were made in the various institution buildings.

The school-room in Trades Building was removed from the rear to front of building, to former Tailoring Department, necessitating a partial reconstruction of both rooms.

A complete equipment for Printing Department was made and put in, consisting of racks for type cases, tables, drawers, shelving, etc.

In the Shoemaking Department, shoe benches, stools, tables, cutting-board and large front-door locker for stock were made. Many screens, screen doors, sash doors, tables, and benches were made. All the wagon and implement work that was possible was done in this department.

One small house was built to cover spring water supply.

The condition of carpenter shop at this time was very crude; the equipment consisting of a cheap grade of tools and no machinery whatever, with any quantity of water power going to waste.

For the fiscal year ending June 30, 1898, the carpenter reports as follows:

"I take great pleasure in reporting a marked improvement in the equipment of carpenter shop, consisting of one H. L. Beach iron tilting saw-table, with rip and cut-off, miter and grooving saws; one Marston 24-inch bandsaw table, complete, with saw; one 12-inch Sebastian wood-turning lathe, with chisels. The above-mentioned machinery has all been set up, attached to main shaft by proper belts and pulleys, and put in first-class running order, without outside assistance. The shop is now enabled to do a greater amount and variety and better class of work in less time than before. Many of the boys in this department have advanced rapidly, and some have shown marked mechanical ability, and there exists no reason why they cannot, when discharged, do well for themselves."

TAILORING DEPARTMENT.

In the Tailoring Department all the uniforms, clothes, overalls, and underclothing used in the School are manufactured, as well as repairing of the same, and the mending and darning of socks attended to.

The gentleman who is in charge of this department has had three years' experience in a similar institution, and is well qualified for the work, besides exercising a good influence on the boys in the work of reformation.

A new Singer sewing-machine was recently added to this department.

From February 21, 1898, from which time books have been kept, to

June 30, 1898, there has been turned out of this department the following-described articles:

Cadets' uniforms	107	Shirts	90
Cadets' extra pants	9	White duck pants	19
Overalls	45	Baseball suits	10
Underwear (suits)	18	Cadets' suits repaired	30
Cadets' citizen suits	9	Besides work for officers.	

The cloth for boys' pants is made with woven stripe, doing away with necessity of braid stripe, and is a decided improvement. The braid stripe was easily removed by cadets who ran away from the school, but this cannot be done with the cloth now in use.

SHOEMAKING.

The Shoemaking Department has so far advanced that no outside purchases of shoes or slippers have been made since January, 1898.

The gentleman who was in charge of this department recently resigned, and a competent successor appointed, under whose instructions the boys are rapidly developing.

We make a good quality of shoe, and a very decided improvement on the old style brogan so long in use, and for which the boys have a positive dislike.

We have recently commenced the manufacture of slippers of superior quality to those heretofore purchased.

The "citizen's" shoe, which is given to paroled or discharged boys, made at the School, is of superior quality and pattern.

BLACKSMITH SHOP.

On February 17, 1898, a blacksmith and wheelwright shop was established, and placed in charge of a competent mechanic.

Several boys are engaged in learning useful and profitable trades. The progress made by the boys is quite satisfactory, and they are very much devoted to their work.

The value of new work, repairs, making tools, wagon, etc., amounted to $665 89 up to June 30, 1898.

The shop is well equipped with one double brick forge, one single portable forge, three anvils, tire-benders, tools, etc.

The tools in use are those largely made by the boys. At the date of writing this report a farm wagon manufactured in the shop was nearly completed, which certainly is a credit to the shop and the School.

With the commencement of the new fiscal year needed improvements in this important department will be made.

ELECTRICAL AND ENGINEERING.

The Electrical Department is well equipped with two Westinghouse dynamos, 110 volts, direct or straight current, and has a capacity of 1,200 16-candle-power incandescent lamps.

This is a most popular department with boys, and in which employment is eagerly sought.

All repairs or changes in electrical apparatus, machinery, plumbing, etc., are attended to in this department, and the cadets employed have rare opportunity for the learning of a trade which must necessarily make them self-supporting and independent.

WATER POWER.

In 1890 the Board of Trustees entered into an agreement for the purchase of water rights located along Sutter and Mule creeks, including rights of way, and site for storage reservoir.

The system was perfected under the direction of competent engineers, so that finally the School came into possession of a most valuable plant, capable of supplying all power necessary for the School, and affording ample facilities for irrigation on a large scale.

The water scheme has its head about one mile from the town of Sutter Creek, and thence by ditch, flume, and tunnel conveyed to storage reservoir, about four miles, at Henderson place.

The reservoir is at sufficient elevation to furnish power required for running machinery.

Water is thence conveyed by ditch, flume, and pipe to head of pressure pipe, about one mile in length. The pressure pipe is made of No. 10 wrought iron, riveted and dipped, and is 18 inches in diameter, with a 300-foot head, giving at power-house 130 pounds pressure to square inch. Water is thence delivered to two waterwheels, 48-inch and 36-inch, and to two water motors, 18-inch and 8-inch.

The section of ditch near head at Sutter Creek was improved by placing therein one 40-foot and two 36-foot sand-boxes to overcome difficulty heretofore experienced of sand being deposited in large quantities in reservoir. This was a much-needed improvement and has greatly improved quality of water.

About 900 feet of 14-inch pipe was put in to take place of wornout pipe.

The system is considered nearly perfect, and can be made entirely so by the labor of inmates, which will be undertaken at the earliest opportunity.

PRINTING DEPARTMENT.

During the previous fiscal year the Printing Department was established, and is well supplied with type, cases, stones, etc.

The press in use is hardly large enough for the work of the School, and will not permit of a long-cherished wish to publish a monthly journal.

All the printing required for the School has been done in the office, and with the aid of a larger press would be enabled to do better and larger work.

EDUCATIONAL.

The cadets in the Educational Department of the School have all shown satisfactory progress in the work, though it is to be remembered that the entrants to the School, as a rule, are deficient.

When the institution was opened in 1894, the school work was divided into three defined sections—primary, middle, and advanced—and the attainments required for promotion to the next higher classification prescribed. In June, 1897, my predecessor deemed it wise and expedient to make a new arrangement of the school work. All the boys of the School were divided into eight grades, according to their various mental capacities. To further this end a new course of study was compiled, and is now being used with success in the School Department. The course of study in use was compiled with the provisions of Sections 1665 and 1667 of the Political Code of the State kept constantly in mind, and the course is in thorough harmony with said sections.

The main object is to give the boy an education commensurate with the time he spends in the class-room.

After a boy has taken the entire course, it can be confidently said that he will be able to read well, to write a legible hand, to make out the accounts in ordinary business life, to speak the English language properly, to spell correctly the words in his own vocabulary, to have a fair knowledge of his country's history, to have some elementary knowledge of the natural phenomena by which he is surrounded, to have developed pleasing manners, and last, but by no means least, to have cultivated a desire for good literature.

In addition to the above, the earnest effort is made to train the boy so that he may become a manly man and a useful member of society.

The boys are taught to avoid complaining and fault-finding, backbiting and tattling.

No opportunity is lost to impress upon them the importance of industry, economy, order, promptness, duty, truthfulness, honesty, courage, honor, good name, and love of country.

They are taught to respect the rights of others, and to develop a hatred of lying, stealing, profanity, vulgarity, and selfishness.

The school-rooms now in use are not adapted for school work, but this difficulty will soon be overcome when the proposed new buildings are completed.

The schools are in need of maps, physiological charts, desks, books, etc.

Since January 1, 1898, another school-room was opened, there being now three school-rooms in operation.

STENOGRAPHY AND TYPEWRITING.

A class in stenography and typewriting was organized May 2, 1898. Instruction is given five days in the week at the hour of 2 P. M., so as not to interfere with other studies or work. The Benn Pitman system

is used, and the cadets composing the class are making rapid and satisfactory progress. The object is to prepare and fit boys who show an inclination that way for office work, and it is confidently expected that any one of the cadets will soon become proficient enough to take employment and earn fair wages.

MUSICAL INSTRUCTION.

An earnest endeavor, fruitful of good results, has been made to inculcate a love and admiration for music. It is unnecessary to suggest the refining influence of music, and its effect has been quite perceptible. A marked improvement in the singing at chapel is observable since a choir has been organized. Much interest is added to these important services. Boys who have shown an aptitude have been given instruction in vocal music.

COMMISSARY.

During the year the Senate Committee on State Institutions visited the School and made certain suggestions relative to keeping the books in this department, which have been adopted, and while somewhat increasing the work, have nevertheless proven more satisfactory. Further improvements and innovations, which experience may suggest, will be made, so that the system may become as near perfect as possible.

The new building, occupied in part by the Commissary, has made things much more pleasant and agreeable than was possible in the former small and cramped quarters.

LIBRARY.

Our library is such in name only. Quite a number of books can be found on the shelves, but they are either worn out, or unsuitable reading for our boys, and the remainder have been read by nearly all the boys. The Chief Matron, the Principal of the School Department, and myself, have prepared a list of about two hundred and fifty books, which will be purchased after July 1, 1898, when the appropriation for that purpose becomes available.

MILITARY INSTRUCTION.

The military work has continued by daily exercises and drills. The setting-up exercises are held six mornings of each week, from 6 to 6:20 A. M. Company and battalion drills and bayonet exercises are held from 4:45 to 5:15 P. M., five afternoons each week. The interest in the drills would be largely increased if we were able to procure arms. All attempts in this direction have failed. It is hoped that the cadets will be equipped with wooden guns, which will soon be made in our carpenter shop.

The exercises and drills produce good effects in securing courteous manner and soldierly bearing in the cadets.

A beautiful silk flag was recently purchased and is used by the battalion on drills and parades.

BAND.

The brass instruments in use by the band are of second-class quality and very much the worse for wear. Two clarinets and flute were recently added.

The band, considering that changes in the membership take place frequently, is doing remarkably well. A competent instructor is in charge, who gives music lessons daily from 1 to 3 P. M., and rehearsals take place at 6:45 P. M. and continue for one hour. Concerts are given Saturday evenings, and the band assists at drills and dress parades.

PHOTOGRAPHIC DEPARTMENT.

There is maintained at this School a fairly well equipped Photographic Department, in which the photographs of all the inmates of the School are taken.

A competent person is in charge and instruction given to boys who show an aptitude in this direction. Wonderful progress has been made, and improvements are contemplated which will place this most useful department upon a still better basis.

HOSPITAL.

I can but reiterate a former recommendation for a separate building for hospital purposes. The hospital, as at present maintained in the Administration Building, and in the event of a contagious or infectious disease, is a menace to the inmates. This is a fault that should speedily be remedied.

This department has always been in charge of a matron unqualified for its special needs. I deemed it advisable to place in charge an infirmary nurse, and the marked improvement in its management is very obvious.

CORPORAL PUNISHMENT.

Discipline is a prerequisite to success in the administration of the School, and is maintained by awakening and appealing to the thinking faculties of the boys, rather than a resort to corporal punishment.

When low or base things are practiced, it becomes necessary to resort to vigorous punishment, which, however, is inflicted with discretion.

Punishment is never inflicted without the knowledge or authority of the Superintendent, and always in his presence, but never by him.

Much time is spent by him in talking to the boys individually, and he finds that ready sympathy and moral suasion have done more to suppress mischief and wrongdoing than more drastic measures.

Many boys are trusted and a spirit of honor cultivated, resulting in the exercise of much more freedom than heretofore, and runaways are rarer.

Humane methods have been productive of beneficial results and will be pursued in the future.

A record of all punishments inflicted is kept.

CHANGE IN THE LAW.

The provision in the law relating to this School, requiring that the county from which a boy is committed shall be required to pay $11 for his keeping, and if parent or guardian is able to pay, said amount shall be charged against him or her, is wrong in theory and practice.

If the boy needs reformation to protect the State against his future depredation, then it is the duty of the State to reform him in youth to save the additional expense of caring for him when he shall have advanced in age and will have become a criminal.

There is no more justice in imposing a charge of $11 for the care of a boy than there would be in imposing a similar charge for the care and custody of a man. A proposition to engraft such a provision on the law, either for State prisons or asylums, would receive but poor support or comfort.

This institution is intended to and does reform youths so that they may not become a future burden to the State, but a serious impediment is put in the way of the good and beneficial work by placing a per capita tax on the counties committing boys to the School.

The result of the operations of this unjust law is that parents who can afford to pay the tax and have no inclination to do so turn their boys out upon the world to engage in a career of wrongdoing and crime, and counties which feel themselves tax-ridden do not commit boys to the School. In the latter case he is either discharged by some humane Judge, or he is confined in the county jail, where he is thrown in contact with some of the worst criminal elements.

Many boys, in consequence of this law, are allowed to roam the streets, going from bad to worse, and who will, eventually, graduate as criminals, while their detention here, and being brought under the restrictive and reformatory influences here existing, might save them shame, their parents humiliation, and the State, in the end, expense.

The law is wrong and should be repealed.

Indeterminate Sentence.—The law should be so changed, relative to the term of service in the institution, that boys should be committed for an indeterminate period, or until twenty-one years of age. If the liberty or freedom of a boy is dependent upon his good behavior, and his term is not fixed, he will certainly make the best showing possible under

the circumstances. The consensus of opinion among authorities on the subject unmistakably favors the indeterminate sentence:

"The key to the failure of the prison, and a chief clew in its reform, lies in the system of administering definite and predetermined sentences by Judges, who, being ignorant of the nature of the individual before them, and therefore of the effect of the sentence upon him, and of its justice, are really incompetent to judge."

"Society must say, in effect, to the individual who violates its social instincts: So long as you act in a flagrantly anti-social manner, I shall exercise pressure on you, and restrain, more or less, the exercise of your freedom. I will give you a helping hand, because the sooner you begin to act socially the better it will be for both of us. I shall be glad to leave you alone, and the sooner the better; but so long as I see that you are a dangerous person, I shall not entirely leave my hold on you."

"That is the only attitude towards the criminal which is at once safe, reasonable, and humane."

"The first reform necessary is the total abolition of the definite and predetermined sentence. The indefinite sentence is no longer new, either in principle or practice; all that is needed is its systematic extension. It has been adopted by several of the American States, such as Massachusetts, Ohio, Pennsylvania, and Kansas, and it was introduced at the famous State reformatory of New York at Elmira by an Act passed in 1877."

NEEDS OF THE INSTITUTION.

We need an ice-making or refrigerating plant, which will involve an expenditure of about $1,500.

We need an appropriation of $2,500 for fences, and $1,000 for lumber for barns, piggery, etc.

The fence on the Preston Avenue side of the School and on the Sutter Creek road are a disgrace to the State. We have tried to effect some improvement in this direction in the past year, but have been unable to do so for want of boys, else something would have been done, even without an appropriation.

An appropriation of $500 should be made for the purchase of books for the library.

An appropriation of $500 should be made for the purchase of tools and other equipments for industrial departments.

An appropriation should also be made for the repair and maintenance of the present water system, with a view of preserving our reservoir, building the reservoir and dam at the head of pipe-line, about a mile from the School, and providing for unforeseen contingencies, such as repairs to ditch and pipe-line, and also for improving the present water supply for domestic purposes, or establishing a new one adequate to the wants and needs of the institution.

An appropriation of $5,000 is required for the erection and furnishing of a Hospital Building apart and distinct from the Administration Building.

CONCLUSION.

I have to return thanks for words of encouragement, to the Governor of the State; to the honorable Board of Trustees, for advice and assistance; to Dr. E. S. O'Brien, my predecessor, and wife, for kindness and courtesy; to E. Carl Bank, former Superintendent, for counsel and assistance, while visiting the Reform School, at Lansing, Michigan; to the officers and employés of the School for hearty coöperation, and to the citizens of Ione and Amador County for earnest support and kind consideration.

Very respectfully,

D. S. HIRSHBERG,
Superintendent.

TABLE I.

Showing Number Admitted and Released.

Nativity.	Number Com'it'ed Since Opening.	Number in School June 30, 1898.	1896–1897.		1897–1898.		Number in School, June 30, 1898.
			Admitted.	Released.	Admitted.	Released.	
White boys	329	193	76	70	26	97	128
Colored boys	14	7	6	1	2	3	11
Indians	3	2	2	1	0	1	2
Totals	346	202	84	72	28	101	141

Whole number admitted	346
Whole number released	205
Whole number in institution	141

TABLE II.

Number Received by Months and Years.

Years.	July	August	September	October	November	December	January	February	March	April	May	June	Total for Years.
1896–1897	10	7	4	11	5	7	5	4	10	6	10	5	84
1897–1898	2	4	4	5	2	0	4	1	6	0	1	0	28
Previous													234
Total													346

TABLE III.

Counties From Which Boys Have Been Received.

	Previous.	1896–97.	1897–98.	Total.	Per Cent.
Alameda	34	18	1	53	15.317
Amador	5	0	0	5	1.445
Butte	4	1	1	6	1.734
Colusa	5	0	1	6	1.734
Fresno	2	0	0	2	.578
Glenn	1	0	0	1	.289
Humboldt	2	0	0	2	.578
Kern	6	4	0	10	2.890
Lake	0	1	0	1	.289
Los Angeles	14	18	7	39	11.271
Merced	4	0	2	6	1.734
Monterey	3	2	1	6	1.734
Nevada	1	1	0	2	.578
Orange	4	0	0	4	1.156
Placer	1	0	0	1	.289
Santa Clara	0	2	2	4	1.156
Sacramento	3	3	0	6	1.734
San Diego	3	2	0	5	1.445
San Francisco	103	18	5	126	36.414
San Joaquin	3	0	1	4	1.156
San Luis Obispo	2	1	0	3	.867
Santa Cruz	5	2	0	7	2.023
Siskiyou	5	0	0	5	1.445
Solano	4	3	0	7	2.023
Sonoma	10	3	0	13	3.757
Stanislaus	1	0	1	2	.578
Tulare	7	5	5	17	4.913
Tuolumne	2	0	0	2	.578
Ventura	0	0	1	1	.289
Totals	234	84	28	346	100.000

TABLE IV.

Causes of Commitment.

Offense.	1896–97.	1897–98.	Previous.	Total.	Per Cent.
Burglary	30	16	52	98	28.322
Grand larceny	5	5	22	32	9.248
Larceny	25	5	57	87	25.143
Vagrancy	8	0	73	81	23.409
Forgery	3	0	2	5	1.445
Misdemeanor	2	0	2	4	1.156
Attempt to rape	2	0	2	4	1.156
Indecent exposure	0	0	1	1	.289
Disturbing peace	1	0	1	2	.578
Felony	0	0	2	2	.578
Malicious mischief	1	0	5	6	1.734
Assault	0	1	3	4	1.156
Battery	1	0	2	3	.867
Indecent assault	0	0	2	2	.578
Vulgar language	0	0	1	1	.289
Obtaining money under false pretenses	0	0	1	1	.289
Incorrigibility	0	0	2	2	.578
Infamous crime	1	0	1	2	.578
Embezzlement	3	0	2	5	1.445
Robbery	0	0	1	1	.289
Arson	1	0	0	1	.289
Assault with deadly weapon	1	1	0	2	.578
Totals	84	28	234	346	100.000

TABLE V.

Courts by which Commitments Were Made.

	1896-97.	1897-98.	Previous Years.	Total.	Per Cent.
Superior Court	79	28	110	217	62.713
Police Court	2	0	96	98	28.322
Justice's Court	1	0	26	27	7.803
Recorder's Court	0	0	1	1	.289
Returned from parole	2	0	1	3	.867
Totals	84	28	234	346	100.000

TABLE VI.

Age of Boys when Committed.

	1896-97.	1897-98.	Previous Years.	Total.	Per Cent.
Eight years	0	0	1	1	.289
Nine years	0	0	0	0	.000
Ten years	0	0	2	2	.578
Eleven years	0	0	15	15	4.335
Twelve years	3	0	9	12	3.468
Thirteen years	8	1	20	29	8.291
Fourteen years	10	3	34	47	13.583
Fifteen years	11	4	42	57	16.473
Sixteen years	18	2	47	67	19.363
Seventeen years	30	12	64	106	30.634
Eighteen years	3	6	0	9	2.601
Nineteen years	0	0	0	0	.000
Twenty years	1	0	0	1	.289
Totals	84	28	234	346	100.000

TABLE VII.

Nativity of Boys.

	1896-97.	1897-98.	Previous Years.	Total.	Per Cent.
United States.					
Alabama	1	0	0	1	.289
Arizona	0	2	1	3	.867
Arkansas	1	1	0	2	.578
California	47	20	149	216	62.428
Colorado	0	0	1	1	.289
North Dakota	1	0	3	4	1.156
Florida	0	0	1	1	.289
Georgia	2	0	0	2	.578
Illinois	1	1	5	7	2.023
Indian Territory	0	0	1	1	.289
Indiana	1	0	2	3	.867
Iowa	1	1	3	5	1.445
Kansas	0	0	4	4	1.156
Louisiana	1	0	1	2	.578
Maryland	1	0	1	2	.578
Massachusetts	0	1	2	3	.867
Minnesota	1	0	0	1	.289
Michigan	0	0	2	2	.578
Missouri	2	0	7	9	5.601
Nebraska	1	1	0	2	.578
New Jersey	1	0	1	2	.578
New York	4	1	5	10	2.890
Nevada	1	0	10	11	3.177
North Carolina	0	0	1	1	.289
Ohio	1	0	3	4	1.156
Oregon	2	0	3	5	1.445
Pennsylvania	0	0	2	2	.578
Texas	1	0	2	3	.867
Tennessee	1	0	0	1	.289
Utah	0	0	1	1	.289
Washington	0	0	1	1	.289
Totals	72	28	212	312	90.168
Foreign Countries.					
Australia	0	0	1	1	.289
Austria	0	0	1	1	.289
Canada	0	0	4	4	1.156
England	3	0	3	6	1.734
France	2	0	0	2	.578
Germany	0	0	1	1	.289
Ireland	0	0	2	2	.578
Italy	0	0	3	3	.867
Mexico	2	0	1	3	.867
Newfoundland	0	0	1	1	.289
Scotland	1	0	1	2	.578
Switzerland	0	0	1	1	.289
Unknown	4	0	3	7	2.023
Totals	12	0	22	34	9.832

Summary.

	Number.	Per Cent.
United States	312	90.168
Foreign countries	27	7.803
Unknown	7	2.023
	346	100.00

TABLE VIII.

Nativity of Boys' Fathers.

	1896-97.	1897-98.	Previous Years.	Total.	Per Cent.
America	39	13	84	136	39.304
Austria	0	0	1	1	.289
Belgium	0	0	1	1	.289
Denmark	0	0	1	1	.289
England	5	2	11	18	5.202
France	2	2	3	7	39.304
Germany	8	1	27	36	10.404
Ireland	3	0	39	42	12.138
Italy	3	0	9	12	3.468
Mexico	6	2	2	10	2.890
Nova Scotia	1	0	2	3	.867
Portugal	0	0	3	3	.867
Scotland	0	1	2	3	.867
Spain	0	0	1	1	.289
Sweden	1	0	1	2	.578
Switzerland	0	0	2	2	.578
Wales	1	0	1	2	.578
Negro	5	2	6	13	3.757
Unknown	8	4	38	50	14.450
Jerusalem	1	0	0	1	.289
Chili	1	0	0	1	.289
Norway	0	1	0	1	.289
Totals	84	28	234	346	100.000

TABLE IX.

Nativity of Boys' Mothers.

	1896-97.	1897-98.	Previous Years.	Total.	Per Cent
America	40	14	92	146	42.194
Australia	0	0	1	1	.289
Austria	0	0	1	1	.289
Belgium	0	0	0	0	.000
Canada	1	0	5	6	1.734
England	3	1	11	15	4.335
France	2	2	2	6	1.734
Germany	6	1	10	17	4.913
Ireland	6	0	42	48	13.872
Italy	2	0	9	11	3.179
Mexico	7	1	2	10	2.890
Negro	5	2	4	11	3.179
Portugal	0	0	2	2	.578
Scotland	0	1	3	4	1.156
Spain	0	0	2	2	.578
Switzerland	0	1	1	2	.578
Unknown	8	4	47	59	16.951
New Zealand	1	0	0	1	.289
Sandwich Islands	1	0	0	1	.289
Wales	1	0	0	1	.289
Norway	0	1	0	1	.289
Sweden	1	0	0	1	.289
Totals	84	28	234	346	100.000

TABLE X.

Religious Beliefs.

Religion.	Boys.	Per Cent.	Religion.	Boys.	Per Cent.
Adventist	2	.578	Methodist	36	10.404
Baptist	15	4.335	Presbyterian	32	9.248
Catholic	165	47.685	United Brethren	2	.578
Christian	15	4.335	Unitarian	1	.289
Congregational	8	2.312	No religion	44	12.716
Episcopal	11	3.179	Mormon	1	.289
German Lutheran	4	1.156			
Jewish	10	2.890	Totals	346	100.000

TABLE XI.

Habits of Parents.

Fathers temperate	237	Mothers temperate	316
Fathers intemperate	109	Mothers intemperate	30
Totals	346	Totals	346

TABLE XII.

Home Relations.

Lost fathers only	78
Lost mothers only	49
Lost both	37
Both living	181
Unknown	1
Totals	346

TABLE XIII.

Disposition of Boys Released.

Number Discharged.	1896–97.	1897–98.	Totals.
Number granted parole	34	55	89
Number escaped	32	17	49
Number returned to State prison	4	20	24
Number returned to court (improper subjects)	1	1	2
Number granted new trials	0	4	4
Number returned to court (improper commitment)	0	0	0
Number released on new warrant	0	0	0
Number died	1	1	2
Totals	73	100	173

TABLE XIV.

Number of Boys Released, by Months and Years.

Years.	July	August	September	October	November	December	January	February	March	April	May	June	Totals
1896-97	5	2	1	3	3	3	2	8	4	6	15	19	71
1897-98	6	10	23	13	9	13	2	3	0	11	3	7	100
Died	---	---	---	---	---	---	---	---	---	---	1	1	2
Totals	11	12	24	16	12	16	4	11	4	17	19	27	173

TABLE XV.

Average Number Months Boys Remained in Institution.

Fiscal Year 1896-1897.	Average Number Months.	Fiscal Year 1897-1898.	Average Number Months.
Boys released on parole	25.9	Boys released on parole	26.6
Boys discharged	25.6	Boys discharged	31.2
Boys escaped	13.75	Boys escaped	14.15
Boys returned (imp. subjects)	26.3	Boys returned (imp. subjects)	1.00

TABLE XVI.

Number of Boys Employed in Different Departments at Close of Fiscal Year.

Departments.	1896-97.	1897-98.	Departments.	1896-97.	1897-98.
Tailoring	12	12	Hospital	3	2
Shoemaking	16	10	Office	2	2
Carpentering	8	3	Housework	26	9
Printing	2	2	Miscellaneous	15	2
Engineer	10	8	Commissary	2	2
Laundry	16	12	Horticultural	26	11
Bakery	8	6	Blacksmithing	0	4
Cookery	20	13	Brickyard	18	11
Agricultural	20	16			
Dining-rooms	30	16	Totals	234	141

SECRETARY'S REPORT.

SECRETARY'S OFFICE, PRESTON SCHOOL OF INDUSTRY,
WATERMAN, CAL., August 1, 1898.

To the Honorable Board of Trustees of the Preston School of Industry:

GENTLEMEN: I herewith submit, for your consideration, a full statement of the financial transactions of the Preston School of Industry for the forty-eighth and forty-ninth fiscal years, ending June 30, 1898:

Table No. 1—Cash receipts from all sources.

Table No. 2—Cash disbursements.

Table No. 3—Department issues by the Commissary.

Table No. 4—Stock issues by the Commissary.

Table No. 5—Exhibit of amount of moneys paid into State Treasury by counties for support.

Table No. 6—Exhibit of financial condition June 30, 1898.

Table No. 7—Trial balance taken July 21, 1898.

Table No. 8—Certificate of Expert Accountant.

Very respectfully,

B. T. K. PRESTON,
Secretary.

TABLE No. 1.

Cash Receipts during the Forty-eighth and Forty-ninth Fiscal Years.

Months.	Maintenance 48th Fiscal Year, $50,000, Balance 47th, $6,451 75; Deficiency, $4,500 00	Completion of Buildings, $145,000 00, Act of March, 1893; Balance, $713 30	Maintenance 45th and 46th Fiscal Years	Salary Appropriation 49th Fiscal Year, $27,500 00	Support Appropriation 49th Year, $35,000 00	Improvement Appropriation, Ap-propriation, $56,000 00	Equipment Appropriation 49th Year, $1,250 00	Contingent Fund	Live Stock
1896—July	$6,072 82	$359 20							
August	4,226 09								
September	2,328 20								$6 00
October	6,167 51		$180 77						67 00
November	500 00								12 50
December	6,330 90								2 75
1897—January	4,624 33								1 00
February	2,163 00								
March	7,694 53								1 00
April									
May	8,882 55								
June	2,583 03								
July	6,801 45								
August	85 00			$2,270 94					110 00
September	2,332 34			2,314 48	$2,052 36	$462 30	$589 94		
October						10 00			
November	42 70	184 40		4,454 64	5,507 59	250 00	148 44		
December	82 64			2,175 50	2,044 53			$100 00	
1898—January								44 55	105 00
February	18 05			4,390 33	9,069 34	339 72		292 31	38 50
March				2,226 65					3 00
April				2,228 83	5,347 65	918 29	343 34	44 87	90 90
May				2,129 32	2,735 00	1,112 21	146 16	12 90	
June				2,178 34	2,524 77	1,510 00	20 22	427 50	
Totals	$60,935 14	$543 60	$180 77	$24,369 03	$29,281 24	$4,602 52	$1,248 10	$922 13	$437 65

TABLE NO. 1—Continued.

Months.	Drayage on Contract Supplies.	Shoemaking Department.	Tailoring Department.	Printing Department.	Sale of Commissary Supplies.	Sale of Water.	Miscellaneous Sources.	Totals.
1896—July	$2 25	$0 95	$5 25	$3 00		$10 50		$6,453 97
August	3 94	3 35	34 50	50	$2 00	8 50	$20 50	4,299 38
September	8 25	6 05	10 75		25	8 00	1 30	2,368 80
October	4 94	2 45	14 70		7 59		35	6,445 31
November	7 85	75			18 08		10	539 28
December		8 05	17 31				15	6,359 16
1897—January	50		1 40				1 25	4,628 48
February	5 50	4 50	60	25				2,173 85
March	9 80	9 20	14 40		21 69		94	7,751 56
April	3 25		47 45		3 48		50	54 68
May			56 00		3 03			8,941 58
June					85			2,583 88
July	7 45	5 70	65			17 00	5 57	6,837 82
August	25							2,466 19
September	1 25	3 65	13 00			6 00	75 69	7,851 01
October	2 15	2 85			1 42	12 00	1 15	29 57
November	13 75	1 70	11 00			21 00	19 95	10,655 17
December	5 14	4 95	27 50	75	15			4,441 16
1898—January	15 36					5 50		170 41
February	36 44	3 80					55 00	14,243 49
March	50	2 10	24 00		32		1 70	2,258 27
April	35	3 30			63		25 83	9,003 99
May	2 14	3 10		32	63		36 40	6,178 18
June	7 45	6 05	20 85		55		2 90	6,698 63
Totals	$138 51	$72 50	$299 36	$4 82	$60 67	$88 50	$249 28	$123,433 82

TABLE No. 2.

Cash Disbursements during the Forty-eighth and Forty-ninth Fiscal Years.

Months.	Salary.	Completion of Buildings.	New Buildings, Act of April 1, 1897.	Printing Material, Horses, Books, Act of April 1st.	Deposits in Contingent Fund.	Legal Services.	Rents.	Commissary Supplies.	Live Stock.	Borrowed Money Paid.
1896—July	$2,186 58	$359 20			$21 95			$3,549 48		
August	2,216 58				73 29			1,874 77		
September	2,164 16				40 60			164 04		
October	2,172 99				97 03	$180 77		3,523 39		
November					39 28		$500 00			
December	4,419 74				28 26			1,702 54		
1897—January	2,229 83				4 15			2,175 55		
February	2,163 00				10 85					
March	2,145 83				57 03			5,185 91		
April					54 68					
May	4,226 08				59 03			4,353 63	15 00	
June					85			1,982 84	238 65	
July	4,498 58				62 18			1,934 65		
August	2,355 94				110 25					
September	2,314 48		$462 30	$589 94	109 59			3,812 32	2 50	
October			10 00		19 57					
November	4,454 64	184 40	250 00	148 44	67 40			4,804 33		
December	2,175 50				138 49			1,391 37		
1898—January					125 86			11 55		
February	4,390 33		339 72		133 74			8,147 42		$200 00
March	2,226 65				31 62					
April	2,228 83		918 29	343 34	121 01			4,734 70	29 07	
May	2,129 32		1,112 21	146 16	42 59			2,601 04		
June	2,178 34		1,510 00	20 22	37 80			2,274 21		
Totals	$52,877 40	$543 60	$4,602 52	$1,248 10	$1,487 10	$180 77	$500 00	$54,223 74	$285 22	$200 00

TABLE NO. 2—Continued.

Months.	Trustees' Expenses.	Traveling Expenses.	Advertising Expenses.	Miscellaneous Expenses.	Medical Services.	Blacksmith and Horseshoeing.	Freight and Express.	Water Power.	Totals.
1896—July	$41 35	$127 13	$68 00	$27 93	$27 00	$36 25	$9 10		$6,453 97
August	40 95	3 00		21 19	4 50	61 60	3 50		4,299 38
September									2,368 80
October	68 35	93 85		188 63	25 50	87 50	7 30		6,445 31
November									539 28
December	52 90	48 35		60 32	7 50	35 25	4 30		6,359 16
1897—January	50 70	10 35		95 30	6 00	54 25	2 35		4,528 48
February									2,173 85
March	94 20	113 95		95 04	13 75	26 75	19 10		7,751 56
April									54 68
May		98 30		154 30	12 75	15 25	7 24		8,941 58
June	151 80	38 90	4 95	121 54	5 25	34 05	5 05		2,583 83
July	40 80	59 75	107 96	88 85	9 75	28 10	7 20		6,837 82
August									2,466 19
September		11 80		490 58	75	47 25	9 50		7,851 01
October									29 57
November	154 70	95 40		451 36		32 65	11 85		10,655 17
December	78 85	11 40		530 60		111 70	3 25		4,441 16
1898—January				33 00					170 41
February	142 55	83 05		624 73		126 35	55 60		14,243 49
March									2,258 27
April	31 00		4 80	167 98		9 25	27 72	388 00	9,003 99
May	15 00			114 36			17 50		6,178 18
June	61 30		82 00	502 80		16 00	15 96		6,698 63
Totals	$1,024 45	$795 23	$267 71	$3,768 51	$112 75	$722 20	$206 52	$388 00	$123,433 82

TABLE No. 3.

Exhibit of Department Issues from Commissary Department, During Forty-eighth and Forty-ninth Fiscal Years, Ending June 30, 1898.

Months.	Superintendent's Residence—Current Expense.	Offices Department.	Boys' Mess Department.	Officers' Mess Department.	Academic Department.	Hospital Department.	Commissary Department.	Library Department.	Photographic Department.
1896—July	$79 95	$4 72	$681 87	$523 52	$9 52	$59 81			
August	70 60	29 32	745 68	538 24	18 24	83 24	$7 28	$1 25	$2 60
September	72 60	9 08	699 62	523 29	8 94	32 01	9 81	4 23	9 35
October	77 09	2 06	769 02	464 44	8 00	53 89	19	1 01	
November	56 83	5 30	729 57	420 23	18 26	33 66	02	2 26	
December	61 54	1 04	785 61	457 20	10 21	55 50		85	
1897—January	57 86	3 29	756 86	396 23	43 36	18 33	21		10
February	62 79	15 56	683 47	453 32	6 74	40 47	12	50	16 53
March	70 50	1 16	877 91	483 73	13 50	59 08	2 43		6 48
April	60 31	2 05	767 37	459 12	16 87	54 95	16		50
May	49 98	8 13	789 41	513 26	6 74	74 75	64		7 10
June	84 95	92 72	796 94	478 03	11 59	39 16	5 72		22 50
July	80 52	10 88	1,006 90	619 89	5 30	50 02	02		27 37
August	67 08	10 25	937 06	621 83	45 93	24 46	02		13 73
September	78 27	51 08	906 41	647 37	3 52	33 13			8 30
October	213 41	29 95	858 59	693 50	7 43	19 98	2 33		4 45
November	70 51	10 33	872 70	676 24	5 06	33 41	11 66	113 00	8 40
December	53 95	7 94	864 65	712 89	4 48	28 82			17 60
1898—January	44 52	7 80	617 66	556 96	5 24	23 41	15		
February	42 00	12 34	887 40	399 55	5 17	26 72	1 76		3 78
March	74 80	15 17	901 74	450 97	56 96	28 56	9 27		18 70
April	71 01	44 43	1,090 89	467 12	15 87	31 30	5 64	3 30	23 00
May	66 18	7 45	959 71	427 08	12 40	40 40	7 26		79
June	50 90	10 89	1,199 70	560 05	1 75	41 34	1 82	2 50	1 95
Totals	$1,718 15	$392 94	$20,186 74	$12,544 06	$341 08	$986 40	$66 51	$128 90	$193 23

TABLE NO. 3—Continued.

Months.	Agricultural Department.	Horticultural Department.	Laundry Department.	Bakery Department.	Blacksmith Department.	Miscellaneous Department.	Carpentering Department.	Tailoring Department.	Shoemaking Department.
1896—July	$257 20	$11 45	$12 28	$1 44			$1 75		
August	128 88	48 96	49 43	23 94		$7 00	156 81	$26 03	
September	214 17	23 50	27 13			15 00	33 57	9 78	$ 14
October	165 62	29 25	16 39	20 81			46 45	61 88	2 50
November	188 90		28 12				9 63		
December	208 51	38 63	23 11	10 32			12 24	8 29	98 10
1897—January	179 47	53 68	17 27	18 08		1 20	4 55	4 36	8 09
February	143 52	66 76	25 78	57		2 30	2 30	2 24	10 91
March	235 83	28 71	48 84	26 76				16 55	14
April	418 28	66 20	22 20	86			6 95	16 00	6 73
May	149 12	23 89	21 95	11 90			25	9 92	32
June	210 58	26 79	14 95	99			1 20		04
July	457 35	6 71	41 01	11 15			72 79	8 50	91 73
August	185 50	37 42	26 89	11 70			2 42	10 10	8 90
September	145 98	42 37	89 36	40			3 19	1 00	13 28
October	154 57	30 00	5 32	2 60		6 15	1 90	13 65	6 55
November	257 21	2 65	53 21	29 19		10 00		11 23	24
December	520 51	10	15 14	17 73				16 26	8 15
1898—January	214 25	8 05	13 05	33 26			10 85	68 13	5 43
February	208 05	48 20	23 20	28 16	$86 17		222 45	32 85	10 30
March	132 45	72 14	33 50	33 90	100 23		12 02	50 95	11 52
April	257 66	52 18	30 90	56 63	137 26		67	74 43	1 20
May	265 92	65 12	35 31	37 11	108 43		12 39	15 88	18 69
June	331 58	5 73	63 99	43 68	44 51		14 23	21 75	7 31
Totals	$5,631 11	$788 49	$738 33	$421 18	$476 60	$41 65	$628 61	$479 78	$310 27

TABLE No. 3—Continued.

Months.	Printing Department.	Engineering Department.	Boys' Department—Supplies.	Officers' Department—Supplies.	Housekeeping Department.	Brickmaking Department.	Officers' Rooms Department.	Improvements Department.
1896—July	$90 19	$274 31	$238 74	$ 35	$10 04			$22 45
August	9 04	351 97	752 97	68	17 58			8 35
September		84 78	361 59	51	17 70			4 22
October	13 38	242 84	452 96	14	13 66			93 18
November		86 80	331 99	23	8 19			27 30
December		305 59	520 41	56	8 27		$3 00	38 56
1897—January		227 73	536 85	06	7 32		10 85	25 18
February	1 62	280 77	440 55	61	8 15			130 83
March	1 35	215 64	411 77	18	9 70		15 00	19 76
April	7 40	146 33	353 44	1 92	12 51			208 60
May	50	12 70	266 26	15	8 30			1 86
June	39	114 02	422 56	08	10 63	$178 38	15 00	34 49
July	249 55	163 43	163 50	23 06	19 25			9 27
August	35 44	232 77	402 86	02	12 00		1 92	79 32
September	10 00	383 16	461 08	45	24 47		9 00	39 75
October	4 34	73 71	415 25		38 33			146 07
November	9 21	277 14	142 82	7 48	11 28			42 28
December	1 10	1,266 60	359 67	35 20	10 75	178 50		506 74
1898—January	38 14	259 59	443 73	70 13	13 35		8 31	260 38
February	21 30	249 32	233 74	19 08	12 05		40	401 03
March	43 63	333 05	427 63	1 61	14 26		16 14	178 14
April	11 56	190 00	403 40	1 07	23 23		90	1,148 82
May	3 69	2 35	331 00	60	15 79			112 17
June	59	75 33	309 55	65	186 33			841 32
Totals	$552 42	$5,849 93	$9,184 32	$164 82	$513 14	$356 88	$80 52	$4,380 07

TABLE No. 4.

Exhibit of Stock Issued from Commissary Department Forty-seventh and Forty-eighth Fiscal Years, Ending June 30, 1898.

Months.	Subsistence.	Soap, Starch, Soda, Etc.	Fuel.	Clothing, Hats and Caps.	Brooms and Brushes.	Crockery.	Shoes and Boots.	Stationery, Books, Etc.	Paints, Oils, Glass, Etc.
1896—July	$1,284 80	$34 93	$147 00	$13 91	$6 66	$10 60	$58 30	$12 07	$0 78
August	1,340 41	44 65	357 10	11 06	22 40	6 07	29 69	48 24	3 91
September	1,280 95	29 82	48 03	23 12	4 62	25 41	41 40	30 04	13 94
October	1,314 04	28 70	208 90	14 50	13 81	5 72	97 93	30 62	49 26
November	1,154 38	46 42	106 50	7 23	7 92	14 12	48 17	28 62	45 14
December	1,271 72	42 85	313 26	40 57	7 62	8 20	56 37	17 94	2 24
1897—January	1,125 69	31 68	290 22	17 77	13 69	2 61	70 38	51 50	71
February	1,118 47	33 67	219 88	37 76	10 94	43 95	56 62	22 08	73 78
March	1,275 90	44 89	341 34	17 38	10 02	18 93	35 21	18 84	14 45
April	1,197 87	35 44	206 55	35 23	7 72	16 59	44 84	29 31	17 59
May	1,255 01	39 30	124 82	1 94	4 75	10 29	22 00	15 88	3 67
June	1,315 93	20 03	121 37	81 82	11 07	38 58	16 00	17 61	28 61
July	1,551 38	55 94	215 72	15 20	13 42	22 23	36 39	16 36	32 62
August	1,606 25	43 95	208 88	25 02	7 09	5 73	54 88	83 80	57 83
September	1,592 36	61 03	204 25	75 45	7 70	16 93	20 35	65 19	11 86
October	1,553 07	41 35	27 50	10 72	23 05	19 05	51 51	57 15	43 39
November	1,503 15	57 53	77 14	16 31	31 37	13 67	7 00	30 06	6 67
December	1,520 72	33 58	1,418 15	30 24	9 42	15 48	42 00	18 17	61 81
1898—January	1,190 40	26 32	264 96	17 04	10 32	9 84	215 10	62 49	11 48
February	1,311 40	32 77	240 19	72	10 46	1 31		10 93	36 19
March	1,377 62	47 88	240 07	33 84	24 53	17 18	5 52	123 96	15 16
April	1,588 37	43 41	248 24	33 00	15 58	8 71		61 79	13 07
May	1,392 81	31 39	58 38	27 03	9 90	33 56		27 48	7 83
June	1,755 34	44 54	170 70	11 24	11 28	9 82		13 36	41 24
Totals	$32,878 04	$952 07	$5,859 15	$598 10	$295 34	$374 58	$1,009 66	$893 49	$593 23

TABLE NO. 4—Continued.

Months.	Dry Goods.	Cloth.	Hardware, "A" and "B."	Drugs and Medicines.	Lime, Cement, Etc.	Garden Seeds, Plants, Etc.	Forage.	Leather and Findings.
1896—July	$123 19		$266 61	$23 08	$5 05	$65 22	$156 00	$11 28
August	305 56	$26 84	174 49	56 23			76 11	207 71
September	144 78		110 86	8 78			180 35	126 42
October	230 46		153 75	18 00		21 25	90 49	84 18
November	148 21		64 37	19 34			154 45	10 00
December	64 96	154 36	100 83	31 17		20 90	119 83	264 18
1897—January	131 65	113 53	74 44	7 20		101 85	105 18	103 86
February	105 46	192 33	144 88	24 80		44 81	104 16	36 30
March	172 41	85 50	67 07	39 60	2 00	33 27	144 93	117 42
April	67 54	76 49	107 28	38 10	9 81	21 75	85 49	110 33
May	34 59		67 80	47 43		25 00	89 34	182 17
June	58 67	179 20	196 79	16 11			68 40	112 13
July	124 21		75 54	27 85			105 02	96 95
August	120 85	65 41	68 07	21 07		16 60	89 90	109 90
September	151 07	68 97	339 72	26 56			121 91	145 10
October	47 00	127 37	86 30	14 78	19 25		137 11	141 78
November	123 84		323 36	15 54			161 46	46 56
December	90 50	52 82	194 17	22 24			490 04	142 66
1898—January	153 06		164 93	22 08	78 88	7 85	188 72	105 87
February	82 70	50 31	476 98	22 36	28 67	41 95	106 24	120 17
March	96 60	187 71	306 85	28 35	61 10	54 30	103 97	88 67
April	146 52	39 94	416 73	20 76		23 14	126 00	110 42
May	86 80	119 81	251 46	28 32			119 04	183 82
June	125 62		907 75	24 02			121 65	133 94
Totals	$2,936 25	$1,540 59	$5,141 03	$603 77	$204 76	$477 89	$3,245 79	$2,791 82

TABLE NO. 4—Continued.

Months.	Underclothes.	Uniform Buttons.	Lumber.	Furniture.	Miscellaneous.	Printing Material.	Live Stock.	Photo Material.
1896—July	$3 00	$14 36			$38 30		$5 55	
August		71	$137 65	$152 95	73 71			$2 60
September		1 03			82 12			9 35
October		2 13	84 58	7 20	73 93		5 55	
November		4 26		82 50	44 46		5 55	
December		20 50	38 56		56 48		15 00	
1897—January		17 88	16 55	75 00	19 69			
February		28 29	81 51		25 89			17 03
March			3 00		59 96		37 15	6 15
April			196 67	3 75	89 25		235 75	
May		1 16			26 13			5 85
June		2 91			115 82		72 05	17 50
July		76	72 79	23 04	32 02	$249 38	335 00	7 13
August		1 12	23 38	7 12	67 16		70 00	13 61
September			64 21		35 22			7 90
October				16 14	216 67			4 15
November					90 11			5 90
December		1 46	428 21		41 26			17 35
1898—January			66 49		39 01			
February		5 17	290 00		72 40	19 55		4 78
March		8 62	89 68		87 03			18 70
April		17 23	631 73		133 64		50 00	22 89
May			88 75		113 96			79
June			87 07		401 78			1 50
Totals	$3 00	$127 59	$2,400 83	$367 70	$2,036 00	$268 93	$831 60	$163 18

TABLE No. 5.

Statement of Account of Moneys Paid Into the State Treasury for Support by Various Counties During Forty-eighth Fiscal Year.

1896—July	$720 60
August	781 73
September	849 57
October	937 57
November	1,001 77
December	1,033 63
1897—January	1,120 89
February	1,125 64
March	1,194 59
April	1,261 33
May	1,322 93
June	1,344 93
Total	$12,695 18

Statement of Account of Moneys Paid Into the State Treasury for Support by Various Counties During Forty-ninth Fiscal Year.

1897—July	$1,365 84
August	1,360 71
September	1,341 26
October	1,334 30
November	1,345 66
December	1,338 70
1898—January	1,321 47
February	1,332 83
March	1,376 10
April	1,402 50
May	1,384 53
June	1,361 80
Total	$16,265 70

TABLE No. 6.

Exhibit Showing Financial Condition June 30, 1898.

MAINTENANCE FUND.		
Balance available from forty-sixth fiscal year	$164 27	
Disbursement	180 77	
Overdrawn		$16 50
MAINTENANCE FUND.		
General appropriation for forty-eighth fiscal year. (Act of April 25, 1895)	$50,000 00	
Deficiency appropriation forty-eighth fiscal year. (Act of March 31, 1897)	4,500 00	
Balance from forty-seventh fiscal year	6,451 75	
Total resources forty-eighth fiscal year	$60,951 75	
Disbursements forty-eighth fiscal year	60,935 14	
Balance unavailable		$16 61
SALARY FUND.		
Appropriation for forty-ninth fiscal year. (Act of April 1, 1897)	$27,500 00	
Disbursements $24,369 03		
June claims 2,285 34		
	26,654 37	
Balance available for fiftieth fiscal year		$845 63
Appropriation for fiftieth fiscal year		27,500 00

TABLE No. 6—Continued.

SUPPORT FUND.			
Appropriation for forty-ninth fiscal year. (Act of April 1, 1897)		$35,000 00	
Disbursements	$29,281 24		
June claims	3,617 44		
		32,898 68	
Balance available for fiftieth fiscal year			$2,101 32
Appropriation for fiftieth fiscal year			35,000 00
EQUIPMENT FUND.			
Appropriation for forty-ninth fiscal year. (Act of April 1, 1897)		$1,250 00	
Disbursements		1,248 10	
Balance available for fiftieth year			$1 90
Appropriation for fiftieth fiscal year			1,250 00
IMPROVEMENT FUND.			
Appropriation for new buildings. (Act of April 1, 1897)		$56,000 00	
Disbursements	$3,602 52		
June claims	288 50		
		4,891 02	
Balance available			$51,108 98
PURCHASE OF LAND.			
Appropriation. (Act of April 1, 1897)		$5,000 00	
Disbursement		5,000 00	
COMPLETION OF BUILDING FUND.			
Balance on hand July 1, 1896. (Act of March 3, 1893)		$713 30	
Disbursements		543 60	
Balance unavailable			$169 70
CONTINGENCY FUND.			
Cash on hand July 1, 1896	$648 67		
Cash received forty-eighth and forty-ninth years	1,100 10		
		$1,748 77	
Disbursements		950 51	
Balance on hand			$798 26
TOTAL AVAILABLE RESOURCES.			
Salary fund		$28,345 63	
Support fund		37,101 32	
Equipment fund		1,251 90	
Improvement fund		51,108 98	
Contingent fund		798 26	
Grand total			$118,606 09

TABLE No. 7.

Trial Balance from Ledger No. 2 of the Preston School of Industry, taken July 21, 1898.

Fol.	Account.	Dr.	Cr.
1	Salary	$53,001 97	
6	Traveling expenses	643 50	
9	Legal expenses	180 77	
10	Freight and expressage	211 42	
12	Advertising	199 71	
12	Tools and machinery	13,437 38	
14	Rents	540 00	
15	Trustees' expenses	1,085 65	
16	Stable	179 38	
18	Miscellaneous expense	3,488 93	
20	Profit and loss	88,246 29	
24	State of California		$349,228 44
28	Improvement appropriation		52,739 07
30	Salary appropriation		55,000 00
30	Equipment appropriation		2,461 95
33	State Treasurer, forty-eighth fiscal year	16 61	
34	Improvement appropriation	51,108 98	
35	Salary appropriation	28,345 63	
36	Support appropriation	37,101 32	
37	Equipment appropriation	1,251 90	
61	Water power account	60,694 11	
64	Repairs	486 36	
66	Medical services	85 75	
67	Telegraph and telephone	74 05	
68	Postage	79 94	
69	Recovery account	381 70	
90	Commissary	801 43	
94	Superintendent's residence (current expense)	3,443 45	
96	Offices department	1,083 86	
97	Boys' mess department	32,824 11	
98	Officers' mess department	23,010 57	
99	Academic department	1,547 67	
100	Hospital department	2,370 01	
101	Commissary department	147 04	
102	Library department	248 85	
103	Photographic department	275 78	
104	Agricultural department	318 12	
105	Horticultural department	1,240 08	
106	Laundry department	1,426 24	
107	Bakery department	$881 98	
108	Blacksmith department	463 94	
108	Miscellaneous department	4,097 68	
109	Carpentering department	1,263 86	
110	Profit and loss, commissary department	7 37	
111	Tailoring department	984 53	
112	Shoemaking department	537 92	
113	Printing department	926 98	
114	Plumbing department	82	
114	Engineering department	9,719 60	
115	Boys' supply department	21.039 75	
116	Officers' supply department	1,099 98	
116	Distributing tank	93 27	
117	Housekeeping department	1,387 12	
117	Trustees' rooms	478 22	
118	Brickmaking department	319 08	
119	Officers' rooms	944 05	
120	Live stock department	1,919 51	
121	Improvement department	4,377 79	
121	Barbering department	29 25	
137	Contingency fund	811 92	
140	Folsom State Prison		$1,228 73
141	A. Caminetti		26 24
142	Joseph Foster		1 50

TABLE NO. 7—Continued.

Fol.	Account.	Dr.	Cr.
145	H. C. Kientz		$3 40
145	Kohler & Chase		13 04
147	Knight & Co.		27 00
148	F. Hammer		14 67
151	Cox Seed and Plant Co.		5 85
153	F. M. Sibole	$5 50	
153	Charles Ludgren	8 00	
154	A. W. Bessy		1 00
155	Petaluma Incubator Co.		1 35
155	J. W. McMurry		5 00
157	H. Cavagnaro		4 25
157	Pacific States Type Foundry		3 60
157	Penwells Ink Manufacturing Co.		1 75
158	Clark Wise & Co.		43
161	J. Fithian		1 00
162	Standard Oil Co.		2 10
163	Stoll & Van Bergen		40
190	D. S. Hirshberg, Superintendent		11 52
245	William Woolsey		80
246	M. Isaacs	2 44	
247	Newman & Bagley	31 65	
248	Daniel Stewart		1 83
249	Ione Coal and Iron Co.	53 00	
250	George J. Yager	18 25	
251	Whittaker & Waddell		62
253	Mrs. John Hartman		11 45
254	J. D. Perkins & Son		2 62
255	Amador County R. F. M. Co.		13
257	E. Schmidt	3 75	
258	Scott & Amick		6 27
259	Benjamin Hopper		40
259	J. C. Jones	4 94	
260	Hammer & Yager		02
298	Sacramento Coal Co.		39 47
300	H. Levi & Co.	11 08	
303	Troy Laundry Manufacturing Co.		45 77
304	American Union Fish Co.		9 93
307	John Breuner	31	
308	Sullivan-Kelly Co.		16
311	Wasserman, Davis & Co.		15 18
313	Industrial Home Adult Blind	75	
318	Weinstock, Lubin & Co.		1 95
319	Baker & Hamilton	9 89	
319	Whitaker & Ray Co.	93	
320	Mau, Sadler & Co.	25	
321	D. Dierssen & Co.		17 91
323	Christianson & Co.	8 74	
323	Pacific Marine Supply Co.	17 70	
327	San Jose Woolen Mill Co.		91 96
328	Miller, Sloss & Scott	15 00	
328	S. H. Frank & Co.	35	
329	Friend & Terry Lumber Co.		25
353	R. G. Zahn		01
353	Stein, Simon & Co.		6 00
354	J. H. Bonham		5 05
384	Hale Bros. Co.		108 35
387	Cooper Music Co.		7 55
391	Harry Unna Co.	26	
	Totals	$461,155 97	$461,155 97

CERTIFICATE OF EXPERT ACCOUNTANT.

PRESTON SCHOOL OF INDUSTRY,
WATERMAN, CAL., October 22, 1898.

I hereby certify that I have examined the official books of the Preston School of Industry, consisting of the regular books of the school and the books of the "Cadets' Cash," and find the same correct.

I also certify that the Secretary, B. T. K. Preston, has kept the accounts of said books in such a manner as to exhibit clearly all the financial transactions during the forty-eighth and forty-ninth fiscal years; and I further certify that I have found vouchers, properly numbered and filed, for all cash disbursements for the fiscal year ending June 30, 1898.

Respectfully submitted.

L. WADHAM,
Expert Accountant for the Board of Trustees of the Preston School of Industry.

REPORT OF PHYSICIAN.

WATERMAN, CAL., June 30, 1898.

To the Honorable Board of Trustees of the Preston School of Industry:

GENTLEMEN: I herewith submit the following report of the Hospital Department from the date of my appointment (June 3, 1897), to the present.

I cannot include the period between the last Biennial Report and June 3d of last year, because of lack of data, there being no record book of cases kept at that time as now. I present herewith list of cases:

Abscess	of hand	1	
	lachrymal	1	
	of lips	1	
	gluteal	1	
	others	2	
Adenitis		4	
Amputations, fingers		2	
Bronchitis, acute and sub-acute		5	
Colic, intestinal		13	
Conjunctivitis		1	
Coryzas		15	
Diarrhœa		1	
Debility		2	
Dyspepsia		4	
Epilepsy		1	
Fistula	in ano	1	
	radius	1	
Fracture, nasal bones		1	
Furuncle		20	
Gastralgia		1	
Heart disease, mitral		1	
Ingrowing toe nail, op.		1	
Keratitis		1	
Laryngitis		1	
Lumbago		2	
Malaria, intermit. and remit.		162	
Otitis media sup.		4	
Pleurodynia		4	
Poison oak		6	
Potts' disease		1	
Rheumatism		1	
Sprain	ankle	8	
	thumb	2	
	wrist	2	
Synovitis knee		1	
Tonsilitis		23	
Tuberculosis		2	
Typhoid fever		2	
Ulcers, tibial		3	
Urticaria		1	
Venereal	gonorrhea	1	
	syphilis, secondary	2	
Wounds	abrasion	1	
	contused	3	
	incised	5	
	lacerated	5	
	punctured	2	

You will observe, by referring to the table, that there has been a large number of cases of illness, and some surgical operations. It will be noticed that by far the largest number of the patients were ill from malaria, which is extremely prevalent in this locality every year. The large number is due in part to the fact that within a few weeks after being discharged there is a recurrence of the fever in quite a percentage of the cases, and these have been entered as new ones. Besides, the report covers the malarial season in two years. It can in no manner be attributed to faulty sanitary arrangements or bad hygienic regulations, for they are good; or to neglect on the part of any of the officers, because it exists to the same extent in the town near by, and in the whole surrounding country.

It is unfortunate that this affection is so prevalent here, because

although not a fatal disease in this climate, it interferes greatly with the work and schooling of the boys.

There have been two deaths in the past year, but in both cases due to diseases generally considered fatal. The first was that of W. Williams, who died on June 4, 1897, of acute meningitis, after a short illness. The second was that of N. Hamilton, from pulmonary tuberculosis, after a lingering illness, during which time he was isolated as nearly as possible, and strict antiseptic precautions were taken in reference to sputa, etc. His death occurred May 17, 1898.

Of the surgical cases, excellent results have been secured in all. There were two cases of fracture, with perfect union resulting in both. Two boys had fingers amputated at first joint, one the result of a felon, the other from a wound that destroyed one half of last phalanx.

Several boys with inguinal hernia have been properly fitted with trusses.

A colored boy had a cervical adenoma of large size removed.

Another was operated upon by the radical method for a severe case of fistula in ano, with complete recovery in a short time.

An Indian boy had the misfortune to receive a severe contusion of one eye from a rock being thrown in play by another boy, which necessitated an evisceration.

An innovation I have introduced is the testing for errors of refraction, under a mydriatic, of the eyes of all boys who are in evident need of such work, and all who require them have been supplied by the management with properly-fitting glasses. To many of the boys who have suffered from the usual effects of eye-strain this has been of great benefit.

While during the past year there have been no epidemics of any serious contagious diseases, I cannot, like my predecessor in his report, refrain from recommending that there be provided for the Hospital a building or rooms more remote than the present location. As it is now in the same building that the officers occupy and on the same floor as the boys' dormitories, should there occur an epidemic of contagious disease, and in all probability such will occur in time, the Hospital would then be a source of great danger and a constant menace to the Institution.

In conclusion, I wish to thank the officers who have interested themselves in this department, and to praise the management for securing the services of such a competent nurse, under whose supervision the Hospital has been conducted in first-class style, and the results attained have in large part been due to her care and ability.

Respectfully,

B. H. FOREMAN, M.D.,
Attending Physician.



SISSON HATCHERY, 1898.

FIFTEENTH BIENNIAL REPORT

OF THE

State Board of Fish Commissioners

OF THE

STATE OF CALIFORNIA,

FOR THE YEARS 1897-1898.

COMMISSIONERS:

ALEXANDER T. VOGELSANG, *President* - - - - - - San Francisco.
C. B. GOULD - - - - - - - - - - - - - - - - Oakland.
J. M. MORRISON - - - - - - - - - - - - - - - Sacramento.



SACRAMENTO:
A. J. JOHNSTON, : : : : : : : SUPERINTENDENT STATE PRINTING.
1900.

REPORT.

To the Honorable JAMES H. BUDD, *Governor of the State of California:*

According to law, the Board of Fish Commissioners of the State of California herewith submits its Fifteenth Biennial Report, being the record of its work from September 1, 1896, to September 1, 1898.

There has been no material change in the policy of the Board since our last report. We fully realize that the principal object of our official existence is the conservation of one of the great food supplies of our people, and we therefore have devoted our efforts chiefly to the fostering, propagation, and protection of our commercial fishes.

The membership of the Board has changed since our last report. Mr. W. C. Murdoch resigned in September, 1896, and Mr. Alexander T. Vogelsang was appointed by you, in November, 1896, to succeed him. Mr. H. F. Emeric resigned in September, 1897, and his successor, Mr. C. B. Gould, was appointed by you at that time. Upon the resignation of Mr. Emeric, Mr. Alexander T. Vogelsang was elected President. The office of the Board was removed from the Flood Building to the Mills Building, San Francisco, in March, 1898. Regular meetings of the Board have been held during the first week of each month, and at such other times as was necessary. Complete minutes of the meetings are on file in our office.

We have made but few changes of employés in the last two years.

Mr. Arthur G. Fletcher, who was clerk of this Board for four years, died in February, 1898. He was a native of Vermont, and was first employed by this Commission to take charge of its interests in the southern part of the State. In this field his activity and success in arresting and prosecuting offenders against the fish and game laws, and his concise and intelligent reports of the conditions prevailing in Southern California, induced the Board to appoint him to the office of clerk. He performed the duties of this office with signal ability. His statistical work in our Thirteenth and Fourteenth Biennial Reports won favorable comment throughout the United States. In 1896 he operated the Wawona hatchery, and made a careful survey of the streams and lakes of the Yosemite National Park, with the result that they have been thoroughly and systematically stocked with fish. His genial nature, his industry, and his intelligence were so marked that we feel his death to have been a distinct loss to the fishery interests of California.

We have to say that the success of our labors, as here recorded, has been rendered possible only by the fidelity and ability of our employés; and in this connection we add that we have exacted from them no qualification except ability and attention to duty.

The generous co-operation and support given us by the United States Fish Commission has enabled us to so extend the propagation of salmon that the result surpasses all previous records in this line. Our salmon work now far exceeds the combined output of all other Pacific States. The work of propagation and the protection of the interests confided to our charge have been conscientiously performed, and we feel warranted in referring with satisfaction to the record which we offer you. No State in the Union has received so large a return for the moneys expended in fostering its fisheries as California, notwithstanding that the benefits of much of the work are not yet fully appreciable. If all moneys expended by this Board had yielded no other result than the successful introduction and protection of the striped bass in our waters, the people of this State would be amply repaid. We feel confident that no other expenditure of State funds has resulted in greater benefit to its people. Our native fishes have been so propagated and protected that they continue in full supply.

The low stage of water in the streams of our State during the past season has greatly injured the game fish supply. Streams that have been well stocked by us, and which afforded our people a supply of desirable game fish, have in many instances become dry. The work of restocking these waters will be taken up by us next season, though it may require the efforts of several years to restore them to the condition of food producers. During the season of 1898 the work of restocking has been confined, therefore, to only a few of the largest streams of our State, with the result that the Sacramento, Feather, Truckee, Yuba, and American rivers and the lake system have received unusually large consignments.

We have maintained an effective patrol of San Francisco, San Pablo, and Suisun bays and the Sacramento and San Joaquin rivers during the run of fish by the constant operations of our launch "Quinnat." The salmon, therefore, have been protected in their passage from the sea to and upon their spawning-beds. The Russian, Garcia, Eel, and Mad rivers have also been patroled during the fall and winter runs of steelhead trout and salmon. We have guarded the interests of Southern California from Los Angeles, and the north and northwestern counties from Eureka, the men being assigned as the needs of the season required. During the spawning and the spring months of the closed season, we have also kept a vigilant watch upon Lake Tahoe and its tributary streams. By moving our force of patrolmen rapidly and intermittently from place to place, we have kept the trout streams of the State, and in particular those along the coast, under reasonably constant supervision.

We may add that a constant patrol of all streams during the close season for those who forestall the law and, during the open season, for dynamiters and other malefactors, is entirely impracticable and utterly impossible under our appropriations, and we respectfully submit that without the hearty co-operation of county peace officers, this work can never be thoroughly and properly done.

The decision of the Supreme Court in the case of *The People* vs. *Truckee Lumber Company*, which is found in the Appendix, has settled the question of dumping sawdust into the streams of this State for all time. All our rivers and streams, with very minor exceptions, are now free from sawdust or mill or factory refuse.

We were unable to compel the construction of a suitable fishway on the dam of the Klamath River Lumber Company, in the Klamath River at Klamathon, during the season of 1897, in time to permit the passage of the spring run of spawn fish. The Lumber Company was bankrupt and claimed to be unable to comply with the laws, and we failed in our efforts to compel it to do so by law. During the fall of 1897, through the generous action of Scott & Van Arsdale, Hervey Lindley, Jesse D. Carr, Edson Brothers, and the Southern Pacific Company, in contributing money and labor, a very strong and efficient fishway was constructed at this important point. The work was undertaken by the engineering department of the Southern Pacific Company. Without the assistance of these public-spirited citizens, the law's delays would have left the obstruction unprovided for during the spring run of 1898. The ladder has worked successfully, and the run of fish to the headwaters of the rivers during the past season equaled that previous to the construction of the dam. We are greatly relieved to have a suitable fishway therein, for the reason that all rainbow trout eggs collected by this Commission are taken from Shovel Creek, a tributary of Klamath River above this obstruction.

In the distribution of game fish, we have made every effort to reach every section of the State. During the season of 1897 we were more successful than previously, and we were fully prepared to follow up this work in 1898, but on account of low waters in the southern and central sections, we were compelled to abandon the work for the year in those localities. In the distribution of the past two years, we have reached many portions of the State that theretofore have been considered inaccessible, but with the aid of Major H. C. Benson, U. S. A., and Mr. A. D. Ferguson, the efficient Game Warden of Fresno County, the barren waters of the Yosemite National Park and the high Sierras have been effectively stocked. In the years to come these waters will afford much food and pleasure to the tourist and camper, and the benefits of this work will then be fully appreciated.

We have carefully expended our funds for the protection and propagation of game by maintaining such a patrol and by importing into

the State such numbers of game birds as our limited appropriation would permit. This work is beset with many difficulties. The reduction of our heretofore wild and unoccupied lands to cultivation is the greatest factor in the depletion of our game supply, except, perhaps, the work of the lawless miscreants who pursue game regardless of the season and to whom our peace officers and courts have not yet brought home the fact that this work is essentially criminal and heavily punishable. The wholesale dealers and the proprietors of French *rotisseries* in San Francisco are most persistent and blameworthy violators of the game laws. We are glad to state, however, that in San Francisco the courts are beginning to see the law, and have lately manifested an inclination to deal with these criminals as they deserve.

The work of propagation of Mongolian pheasants has been seriously and thoroughly undertaken, and we are in receipt of many encouraging reports from sections of the State of the result of our labors in this behalf. We hope that we may continue the importation for several years to come.

In the pages which follow we present in detail the results of our efforts and the conditions affecting the fishery and game interests of the State.

The resources and expenditures of the Commission have been as follows:

Forty-eighth Fiscal Year.

	Resources.	Disbursements.
Support and Maintenance of State Hatcheries—		
Appropriation	$7,500 00	$7,500 00
Restoration and Preservation of Fish and Game—		
Appropriation	10,000 00	10,000 00
Fish Commission Fund—		
Balance on hand July 1, 1896	1,664 45	
Receipts from licenses, fines, etc.	4,232 50	
Amount expended		4,683 56
Balance on hand		1,213 39
Totals	$23,396 95	$23,396 95

Forty-ninth Fiscal Year.

Support and Maintenance of State Hatcheries—		
Appropriation	$10,000 00	$10,000 00
Restoration and Preservation of Fish—		
Appropriation	10,000 00	10,000 00
Restoration and Preservation of Game—		
Appropriation	2,500 00	2,500 00
Fish Commission Fund—		
Balance on hand July 1, 1897	1,213 39	
Receipts from licenses, fines, etc.	4,342 50	
Amount expended		3,184 67
Balance on hand July 1, 1898		2,371 22
Fish Commission Boat Fund—		
Balance on hand July 1, 1897	1,100 00	
Appropriation for purchase of launch	1,500 00	
Expended for purchase of launch "Quinnat"		2,600 00
Totals	$30,655 89	$30,655 89



THE TAUTOG (*Tautoga onitis*).

In the Appendix will be found a detailed statement, showing to whom, and for what purpose this money was paid by the State Treasurer, after having been approved by the Board of Examiners.

LICENSES. In the Appendix will be found a statement showing the number, class, and amount received from the sale of licenses sold during the past two years. The collection of these licenses was made by the patrol department.

WORK OF THE U. S. FISH COMMISSION. In addition to the propagation of salmon carried on in this State by the National Commission, it has, since our last report, made three plants of Atlantic marine species in our waters, as follows:

Species.	Point of Deposit.	Number.
Lobster	Cypress Point and Farallones	360
Terrapin	San Francisco Bay	120
Oysters	Humboldt Bay	25 bbls.
Tautog	Monterey Bay and Farallones	570
Blue Crab	San Francisco Bay	162

The lobsters were adult, egg-bearing specimens, that were received in prime condition and were held in fresh salt water until fully recuperated and were then liberated in favorable places. If this desirable crustacean will thrive in our waters, these plants should demonstrate the fact. The blue crabs were adult, and very strong. It is the soft-shell crab of the Eastern market, and will prove a valuable addition to our aquatic food. There seems to be no reason why they should not become acclimated. The tautog is a very common and highly prized fish of the Eastern coast market. The oysters planted in Humboldt Bay have thrived, and specimens carrying spat have been forwarded to us, but so far no evidence of their propagation has been offered. The conditions, however, are favorable.

THE LAUNCH "QUINNAT." By reason of the moneys in the Fish Commission boat fund, $1,100, and the appropriation of $1,500, made by the thirty-second session of the Legislature, we were enabled to enter into a contract with John Twigg & Sons, San Francisco, under which they built for us a twenty horse-power gasoline launch, 40 feet over all, 7½ feet beam, and a depth of 42 inches. This boat has an average speed of eight knots, is completely housed in, and fitted with living accommodations for four men. She is a staunch and seaworthy boat. We have called her "Quinnat," the Indian name for the Sacramento river salmon. She was placed in commission in August, 1897, and has ever since been used in the patroling of the bay and rivers. The addition of this boat has added greatly to the efficiency of our patrol. By its means we have been enabled to make repeated visits to all the fishing grounds and examine most closely into the methods practiced by our fishermen. The presence of this boat among these hardy men has a most beneficial effect in giving weight to the regulations affecting the



THE FISH COMMISSION LAUNCH "QUINNAT."

fisheries, and while our deputies have been enabled by its use to make many arrests, remove set nets, and destroy miles of the prohibited Chinese sturgeon gear, the knowledge that the launch was in commission and liable at any time to visit the fishing grounds has forcibly impressed upon the fishermen the necessity of a close observance of the regulations.

SCREENS.

Section 628 of the Penal Code requires persons owning or operating ditches or canals, etc., to place and maintain over the inlets of their ditches a screen of such fineness, strength, and quality as shall prevent any fish from entering such ditch, "when requested to do so by the Fish Commissioners." In other words, this power is discretionary with the Board. We have gone to considerable trouble and expense in investigating this problem, and find that in nearly every instance it brings us in collision with other important interests of the State, to wit: mining, agriculture, and horticulture. To be of any avail whatever screens must be fine enough to keep out small fish, and such screens are naturally prone to become clogged and impassable to water, as all streams carry large quantities of débris in the form of leaves, grasses, and subaqueous growths, which gather upon and cling to them, so that in a very short time the water is shut off below and they must be cleaned.

From our experiences with all forms of devices for screening waterways, we have, as yet, found nothing that does not require constant attention to secure a free flow of water. This is the case with even the smallest ditches, and miners, fruit-growers, and farmers rise up in wrath when called upon to maintain a device which entails upon them constant employment of labor for the purpose of keeping the screens clean. They claim, with much reason, that their interests are already sufficiently taxed. We find that most irrigating companies, and nearly all persons to whom we have addressed ourselves upon this matter, are willing to obey the law if we can suggest to them an effective device.

Of the food fishes, the trout suffers the most by this condition. The salmon of the Sacramento Valley are not affected. In the San Joaquin Valley they are too scarce to be considered, although in that section the black bass may hereafter become the sufferers. The question then becomes a contention between the trout interests and the farmer, miner, and fruit-grower. While we admit that the damage to the trout is considerable, we are slow to believe that it is sufficient to enforce the hardship of additional continuous expense upon these industries.

We have considered the matter fully, carefully, and almost prayerfully, and have withheld the exercise of our discretionary power until such time as the inventive genius of our people shall produce such a screen as may be used without entailing a great additional expense to the miners and irrigators.

PHEASANTS.

During the fall of 1897 we sent an agent to Oregon to purchase Mongolian pheasants for distribution in suitable localities in this State. Three hundred and twenty-three birds were purchased and assigned in five-pair lots to locations in almost every section of the State, where they were turned down in suitable cover. We have reports from almost every shipment, showing that nides of young birds have been seen during the past season, and we feel confident that in nearly every locality they have propagated. These birds will be a decided addition to our covers, and will damage no interests. To show the value of these birds, attention is called to the statement made by Oregon's Fish and Game Warden, Hollister D. McGuire, that upwards of ten thousand of these pheasants were marketed in Oregon in 1897, at an average price of fifty cents each. In the Appendix there will be found a statement showing the location where these pheasants were liberated.

DEPLETING TROUT STREAMS.

The anglers of this State should remember that the taking of small fish from our trout streams is one of the greatest factors in depleting them. The stories of the "remarkable catches" made from many of our streams of from 70 to 150 fish to the creel, so common in the "rod and gun" columns of our newspapers, show the great injury done by thoughtless fishermen, many of whom are the loudest in the cry that the streams are being fished out and require more stocking. So long as the three- and four-inch fish are killed, no surprise should be expressed because the streams have no large trout. The work of planting fish fails of its purpose where this practice prevails. Take for consideration Paper Mill Creek and its tributaries in Marin County. Though comparatively small, it is one of the greatest natural trout-breeding streams in California, and it is probably more frequented by fishermen than any other stream in the State. It is persistently fished from the beginning to the end of the season by a very large number of men, many of whom kill every trout they catch, regardless of its size. Many of these fish are not over three inches in length. This slaughter goes on until the first of December, with the result that the fry hatched out in the late winter months are almost entirely destroyed before the season closes. The State has, in addition to the natural propagation, stocked this stream year after year, and the work has been well done, but it has been of little or no benefit to the anglers who go there. This condition must prevail so long as the fry of each season is destroyed in this thoughtless manner. There should be an unwritten law among fishermen, as with anglers, that all fish under six inches in length should be returned to the water, and until such a law is recognized by the men who frequent the streams, the sport will decrease.

CONDITIONS PREVAILING IN OUR FISHERY MARKETS.

Prof. H. C. Bumpus, of Brown University, read a paper before the Fishery Congress held at Tampa, Florida, in February, 1898, that is so applicable to the conditions prevailing in our fishery markets that we extract the following, with the hope that our fishermen and dealers may take active steps to improve their methods:

In one direction in particular there is crying need of both extended and extensive scientific research. I refer to a matter that received some attention at the Chicago congress, namely, that research which shall result in the development of the market for food fish. I think I do not overstate the fact when I say that there should be three times as much fish consumed as is consumed at the present time. The problem is not alone how shall we produce more fish, but how shall we improve the industry by providing a better and a more stable market for what is already produced. I feel that the fisherman and the fish-dealer are in a measure responsible for the fact that the average American cannot endure fish oftener than one day in seven, and were it not for a wise provision of the Church, perhaps one day in seven would be far too frequent. While the dressing and shipping of meat and poultry has almost become an art, the methods of dressing and handling fish are crude in the extreme.

The abuse of fish as an article of food begins at the moment it is captured, and extends to and often beyond the kitchen. I need not relate the rough handling on board the smack, the careless packing, and the slovenly condition of our markets. These are all prejudicial to the consumer, as well as to the fish; but I wish to emphasize the fact that they are also sources of great loss to the dealer.

The blood that is ordinarily allowed to remain in the fish is the very medium that the bacteriologist uses for the culture of microbes, and its retention in the body of the fish provides the very medium in which the germs of decay delight. Should the fisherman bleed the fish immediately on its capture, he would do much toward its reaching the consumer in a healthy condition.

The digestive organs of the fish are very active, and the processes of digestion continue after death, but while before death the contents of the alimentary tract are alone acted upon, after death the digestive ferments attack the surrounding tissues, and they attack these tissues with great energy. A few minutes is often sufficient for the deterioration of the flesh immediately inclosing the abdominal cavity. It would be a great saving to the dealer if the fish could be disemboweled and thoroughly washed as soon as captured.

Decay is practically an infectious disease. It is the direct result of the activity of certain microscopic organisms. If these organisms have difficulty in entering the tissue of the fish, or if their activity is inhibited through the application of cold, or certain chemicals, the process of decay is retarded. Every time a fish is roughly handled, thrown upon the deck or pitched about as so much offal, walked upon or bruised in any way, the continuity of its flesh is broken and decay germs flood into the rupture. The slightest bruise of an apple or pear results in the formation of a center of decay quite visible to the eye. In the fish the center of decay is not so easily detected by the eye, but it is nevertheless present, and its presence is damaging to the dealer and disappointing to the consumer.

Animal tissue absorbs water very readily, but on the absorption of water it changes its structure, loses its flavor, and rapidly deteriorates. Fish should not be allowed to lie in their own slime on wet floors, or in poorly drained barrels and boxes.

The present method of shipping fish by the use of chopped ice is crude, expensive, and often ineffectual. Poultry, meat, or anything but fish would find no market, if shipped in a similar way. The fish arrive at their destination in a thoroughly uninviting condition; they are reeking with slime and filth, ghastly to the sight, offensive to the smell, and disgusting to the touch.

If the retailer along the coast, as well as inland, can be provided with fish that have been properly killed, skillfully cleaned, and carefully handled, he will be in a position

to present them to his customers in an attractive form, and the consumer will discover that all fish do not taste alike, which is synonymous with saying all fish are not equally bad.

While urging that all lines of research already undertaken by the Government should be continued, I would suggest that a definite series of experiments be instituted which shall ascertain the best methods of preparing, packing, shipping, storing, and retailing fish, for I am convinced that improvements are possible along all these lines, and that with improvements the demand for food fish will be very materially increased.

THE USE OF DRAG-NETS.

Though there are extensive fishing interests carried on along the entire coast, the principal supply of fresh salt-water fish consumed in the State is captured in the ocean near San Francisco, and of this supply the great bulk is furnished by the two companies who use the drag or paranzella nets upon the bottom of the sea outside of the Heads. This method of fishing is the only one of its kind carried on in our waters. It is of Italian origin. The mud banks off the coast of California south of Point Reyes and extending to Monterey afford a large field for this method of drag-net fishing, and our principal market supply of flounder, sole, and tomcod is captured there. This method of fishing has excited some considerable adverse comment, as being very destructive of small fish, but so far as we have been able to determine, the method is not so destructive as the practice of drawing small-mesh nets upon the beaches, and in the bays along the coast, while it has resulted in furnishing our markets with an abundance of fine fish at low prices. The effect of this fishery upon the market price is fully demonstrated during the time of heavy weather outside of the Heads, when this method cannot be used, by the sharp advance in price of all kinds of fish. The introduction of these nets in this fishing has unquestionably driven a considerable number of bay fishermen out of the business, but it has also lowered the price of fish to the consumers, and assists in protecting the spawn fish that enter our bays.

THE GAME LAWS.

The laws regulating the killing of game have given general satisfaction, save in the length of the open season for ducks and quail. We believe the season should be shortened by making the closed season begin February 1st, and extend to October 31st.

The killing of pheasants should be prohibited indefinitely. When they have become established, provision can be made for an open season. The catching or killing of all wild birds by means of nets should be prohibited. Many thousands of insectivorous, as well as game, birds, are killed in this manner. A naturalist wrote us a letter last May concerning this method of taking birds, from which we extract the following:

Sunday, February 15th, I took a spin in the country on my wheel, and witnessed a sight I never expected to see outside of Europe. I was following along on a levee when I came upon two Italians, who had a net of fine mesh, about fifty feet long, stretched

across a patch of brush. This brush extended along the levee for miles, and is inhabited by thousands of small birds, especially the intermediate white-crowned sparrow and Heerman's song sparrow. When I saw this net I supposed it was used for catching fish, and that the Italians were simply repairing it. I sat down to watch the men fix the net, and was very much surprised to see them begin to beat the brush with sticks. They began about one hundred yards from the net and came toward their snare, all the while keeping up their whipping of the brush. As soon as I saw this I thought they were snaring birds, and sure enough when they had finished their drive they had captured about 50 birds, which was a very small number, as I afterwards found out. When they had removed the birds from the net, I examined them and found about 20 intermediate sparrows, 15 Heerman's song sparrows, 5 spurred towhees, 5 golden-crowned sparrows, and several California towhees. These happened to be all the varieties in this brush, for had there been more they would have captured them, as not one bird escaped. During the afternoon they captured 300 birds. I questioned them and found that they had been practicing this very same thing for some time, and had captured as high as 2,000 birds in one day. It makes no difference what kind of a bird they drive into their snare, and I think if it is kept up it will prove disastrous to some of our songsters. These Italians go out nearly every Sunday, and probably there are more practicing this very same thing. I am told that these birds are skinned and shipped to the market as reed birds.

DEALERS IN GAME.

We believe that every dealer in game should be required to take out a license, and should be required to keep a record of all game received or purchased by him. This record should give the name and address of the persons from whom the shipments come, together with the date, number, and variety. This record should be open to the inspection of the Commissioners or their assistants at all times, which would enable us to determine the market value of the game interests, and recommend legislation for its protection and propagation. We would also suggest that any dealer violating the provisions of such an act should forfeit his license, pay a fine, and be prohibited from selling game for two years.

The people of the State appropriate money to protect and propagate game, and why should not those who make money by selling it pay a license to assist in our work? The fishing interests pay a license, and the money so collected is devoted to the propagation of fish. Why not require a license of the game dealers, and devote the money so obtained to the propagation and protection of game?

GAME WARDENS.

In almost every instance where Boards of Supervisors have exercised their powers to appoint fish and game wardens, there has resulted a manifest advantage to the fish and game interests. It is to be regretted that more counties have not appreciated the importance of such appointments. It appears to be owing to a lack of public sentiment favoring the protection of fish and game, that so few counties have appointed wardens. The sportsmen of the State should bear in mind that the Supervisors have the power to appoint game wardens, and should combine to see that they are appointed. One active resident warden in each county can compel a more thorough observance of the fish and game laws

than a dozen stranger deputies. It is true that there are enough peace officers in each county to enforce these laws, and that they would enforce them if the public sentiment was stronger in their favor. We believe that in many sections the necessity for and the benefits to be derived from the protection of fish and game are fully appreciated. But in many of the outlying sections (and they are the game sections) this sentiment is lacking.

In counties where there are wardens we know the laws are closely observed. In these counties we have shown special favors in the distribution of fish, and feel that in this way the State's money is best expended. Results prove it. We have granted all applications for fish made by county wardens, and in the distribution of pheasants we have been generous in our allotments to them.

ENFORCEMENT OF THE LAW.

In the enforcement of the fish and game laws, the efforts of our small force have been more successful than heretofore. The number of violations detected have been increased, and we have obtained a greater number of convictions. All complaints made to us have been promptly investigated. When we were unable to send our own deputies to examine into such reports, we have authorized the Sheriff of the county to engage a man to do so, guaranteeing him compensation and expenses. We have been given much assistance in this work by the fish and game wardens in counties where such appointments have been made. We regret that more counties have not appointed such officers, as we believe there have been few violations in such counties that have not resulted in the arrest of the guilty parties. We have given particular attention to enforcing the laws that regulate the catching of fish for the markets, and we believe that they are now more generally observed than in the past. The market fishermen seem to realize fully that these laws further their own interests, and that a violation will cause them trouble and expense.

In the work of protecting the commercial fisheries the launch "Quinnat" has been of great assistance.

Punishment for the violation of the commercial fisheries laws has been made so severe that the market fishermen understand that their catch will not compensate them, under ordinary conditions, for the risk taken. The result is that they seldom attempt the violation of the law, and when they do, and are convicted, they serve their time in jail rather than pay the heavy fine.

We have during the past year maintained a paid force detailed to enforce the game laws, and to watch and hunt the class of men known as "hide hunters," who kill deer for their pelts. We have found much trouble in securing the conviction of these persons. The business of killing deer for their hides is conducted in outlying districts, where the

few residents regard such killing for meat and even for hides as being a matter of no importance. In these sections Justices' Courts are widely separated and wildly conducted, and every possible obstruction is placed in the way of securing a conviction. There is no denying the fact that a considerable part of the farming community do not regard the game laws as being binding upon a man who has a family and wants meat, and they refuse to be parties to his conviction, even when the evidence offered is conclusive. There is, even among men who style themselves sportsmen, a considerable class who seem to lose sight of the right and wrong of killing fish and game, once they get into the stream or field. This, probably, results more from thoughtlessness than from an intent to do a wrong to others, but the result is the same, as it encourages a class who already regard the law lightly. No law prohibiting the killing of fish and game becomes effective until there is a local sentiment created which recognizes its importance and demands it. In addition to the efforts made by the peace officers for the enforcement of the laws, several clubs and Boards of Supervisors in the State have assisted by offering rewards for the arrest and conviction of violators.

Of all crimes against the fish and game laws, that of killing fish by means of explosives is the most damnable, and should certainly bring down upon any person convicted of their use the full penalty of the law; but in no case where we have secured a conviction has the court given more than the minimum fine. The use of powder to kill fish is much more common than is generally known. It, like arson and poisoning, is one of the hardest crimes to prove. It is seldom that evidence sufficient even to warrant an arrest can be obtained. In fighting this practice we have offered a reward of $25 for the arrest of any person so engaged, regardless of a conviction being secured, provided that the District Attorney of the county where the action is taken certifies to us that he believed the evidence warranted the arrest.

The following is a summary of the arrests made and actions begun by our patrol force since the last report:

Summary of Arrests Made for Two Years ending September 1, 1898.

No. of Arrests and Complaints Filed.	Offenses Charged With.	Pleaded Guilty.	Convicted.	Acquitted.	Dismissed.	Cases Pending.	Served Time.	Complaints "John Doe."	Fines Imposed.
31	Using illegal mesh nets		3	7				21	$300 00
30	Using "set nets"		3	5			2	22	100 00
32	Using Chinese sturgeon lines		1				1	31	100 00
9	Taking salmon, "closed season"		2	5			1	2	100 00
10	Taking salmon, Saturday and Sunday	3	2	2			4	3	100 00
18	Fishing without license		18						135 00
8	Possessing underweight striped bass	1	5	2			1		100 00
4	Possessing underweight lobsters		3	1					60 00
9	Taking trout, "closed season"	3		6					30 00
3	Taking trout in traps		1	2					20 00
19	Using explosives to kill fish	1	6	12			6		1100 00
77	Possession of young fish	2	25		20	30			500 00
7	Possession of female crabs		7				7		140 00
4	Dumping sawdust in streams			2	2				
14	Possessing wild ducks, "closed season"	2	3	1		1		7	200 00
4	Possessing quail, "closed season"			3	1				
11	Killing deer, "closed season"	3	3	5					100 00
3	Trapping quail	1	2				2		40 00
4	Selling deer hides			2				2	
297		16	84	55	23	31	24	88	$3125 00

The Sacramento and Truckee rivers have been carefully inspected. There are some fish-ladders on the dams in that part of the Truckee River in this State that are not satisfactory, but we hope before the first of the year to have all defects fully remedied. The ladders, generally, in this State, are kept in good repair, and there is no question but that they permit the free passage of fish during the high stages of water, though some are not as effective as we could wish.

There are several dams in the Truckee River in the State of Nevada that obstruct the passage of fish, which, for the joint interests of Nevada and California, we hope to have equipped with efficient fishways, and have undertaken to bring about this result with the State officials of Nevada. It is our keen desire to have a free and open passage for fish through the entire length of the river from Lake Tahoe to Pyramid Lake, and should our efforts in Nevada meet the success that we now have reason to expect, we shall undertake to stock the river with the most desirable varieties of trout each year, to its fullest capacity.

AN ATTORNEY FOR MINOR COURT CASES.

In the prosecutions of offenders in the Justices' and Police Courts we have felt the need of an attorney to look after the cases. Under the law it is the duty of the prosecuting attorney of the county to represent the people in all such matters, and a few of the District Attorneys have given our cases their hearty support, but in most of them this attention has been lacking and the prosecution consequently weak. In the trials in the San Francisco Police Courts the prosecuting attorneys are too much engaged to give our cases more than slight attention, with the result that they have dragged their weary way along with one continuance after another, and in many cases failed of conviction for lack of legal support. These results weaken the effect of the arrests made.

The Attorney-General has been very attentive to all of our requests for legal advice and assistance, and upon two occasions has detailed a deputy to help prosecute for us in the Justice's Court, but he has done this at the expense of other and possibly more important matters in his office. While he has been disposed to assist us in every possible way, he has been unable to furnish us with attorneys for minor court cases, and they have suffered.

There should be authority given this Board to employ an attorney to look after these cases. We believe that an active attorney could be paid from the additional fines collected by a vigorous prosecution, and request that the Legislature empower us to employ an attorney for this work. We do not ask a separate appropriation for this purpose. The expenses should be met by drawing upon our regular appropriation.

TRIALS IN SUPERIOR COURT.

The amendment in the law which places the trials for violations of the salmon and set-net laws in the Superior Court instead of before the Justice's Court, has been of great assistance in the prosecutions under these acts. Trials conducted in many of the Justices' Courts of the State are farcical. Many of them are not conducted seriously, and usually result in an acquittal regardless of the evidence. The trials in the Superior Courts are conducted with dignity. The defendants must employ an attorney, and so well is this understood that in most of these cases a plea of guilty is entered at the preliminary hearing, while in many cases where the owners of the apparatus used were not captured and are unknown to our officers the apparatus is left in our charge. The owners prefer to lose it rather than face a trial in the Superior Court.

THE DISPOSAL OF ILLEGALLY POSSESSED FISH AND GAME.

The Code should have made provision for the disposal of illegally possessed fish and game, and fishing apparatus illegally used or possessed. By advice of the Attorney-General our men seize all fish and game illegally possessed, and remove all illegally used gear and place the same in the custody of the Justices' Courts, to be held as evidence in the trial that follows; but there appears to be no provision for the disposal of apparatus so held if the owners or users are not discovered, as is often the case. The lines and nets taken by our men are cumbersome, and must be held by some storage company under expense, and the Justice is given no funds to pay for it, nor has he authority to dispose of the property. The result is that neither the Justice nor the storage companies are willing to undertake its custody, and our men are embarrassed in handling them.

This condition prevails also with illegally possessed fish and game. Our men cannot turn over to the custody of a Police Court several hundred pounds of illegally possessed fish or game. The State is the original owner of all fish and game and does not lose its title if they are illegally taken or possessed, and it is manifest that a person illegally possessing must surrender them to the officer making the arrest. In all cases where such fish and game are seized, all but that desired for evidence is sent to some charitable institution, but the Code makes no provision for our doing so. We have called the attention of the Code Commission to this matter, and are informed that they will cover the point in their report to the Legislature.

THE CAPTURE OF SHRIMPS AND SMALL FISH.

During the season of 1897, we caused a very careful inspection of the Chinese shrimp fisheries, in order to ascertain the nature and weight of their catch. For this investigation, we employed Mr. N. B. Schofield, of Stanford University, who was indorsed by Mr. David Starr Jordan. The inquiry was carried on for a period covering several months. In order that this fishery may be fully understood, we make the following extract from Mr. Schofield's report for July, 1897:

The Chinese shrimp boat is of Chinese make and pattern, and is 40 feet long by 10 feet on the beam; it carries a 30-foot mast, which bears a typical Chinese sail. The crew is invariably made up of five men.

The fishing is done by means of bag nets made in China expressly for the shrimp fishing. Each net is about 20 feet across its mouth, and narrows quickly into a narrow bag about 40 feet long. The end of the bag is open, so that the contents of the net can be easily let out by untying a string which holds the opening closed. Near the mouth of the net the mesh is large (about 2-inch), but it gradually grows smaller till in the last half of the bag the mesh is ½-inch.

Each boat operates from twenty to thirty nets, which are set on the bottom with their mouths against the current. Some position is selected in the channel where the Current is strong, and here a line is stretched across the current—lying on the bottom

and anchored at either end and occasionally in the middle—the position of the anchors marked by buoys. The nets are set along this line, usually at low tide, and are taken up again at the next high tide; depending on the current to drift the shrimps into the nets.

By a special contrivance the nets can be set and taken up without lifting the anchors by which they are held in place.

In drawing in the nets the fishermen pull up one end of the line to which the nets are attached, and pass it over a pulley at the bow of the boat and reel it in by a windlass in the stern. As each net comes up to the surface at the bow of the boat, it is unfastened from the line and carried around to the side of the boat, where it is pulled up by hand and its contents dumped into the boat. The nets are taken ashore and dried, and at the next low tide a second set of nets is taken out, each boat having two sets.

The number of shrimps caught by each boat varies greatly. At some times they catch only a couple of baskets, which weigh about 90 pounds each; at other times, when everything is favorable, they catch as high as eighty baskets. These numbers include everything caught.

The shrimps when brought into the camp are first boiled in large open vats. Salt water is used for the boiling, coarse salt being added in large quantities. After boiling about thirty minutes they are spread out on the ground to dry. After they are sufficiently dried they are swept together and rolled thoroughly with heavy cleated rollers, which break the shells away from the "meat" of the shrimp. Then, after a process of alternate sifting and beating and picking over by hand and running through a fanning mill, the "meat" is gotten out. For this dried shrimp meat the fishermen get 8 cents a pound in San Francisco. The shells and other impurities are saved and are made use of as a fertilizer, and with the rest of the shrimp product are sent to China.

A few shrimps are taken at this San Rafael fishery and sent fresh each day to the San Francisco market.

The time of setting the nets varies. Sometimes the best catch is made while the tide is running out; at others, the catch is equally good for the outgoing and incoming tide—due probably to a general movement of the shrimps, independent of the current.

When the catch is large the men stay at the nets and pull them in every hour or two.

The average catch per day for each boat at the San Rafael fishery during the last two weeks of July was 70 baskets, each basket weighing about 90 pounds, making in all 6,300 pounds. The average number of boats out each day was seven, making in all a daily catch of 44,100 pounds. For fifteen days this number is swelled to 661,500 pounds. One half of this consisted of small fish, principally of the following species: *Osmerus thaleichthys* (smelt); *Engraulis mordax* (California anchovy); *Porichthys notatus* (midshipman); *Lepticottus armatus* (sculpin).

The small *Osmerus thaleichthys*, about 2¼ to 3½ inches long, were very abundant, making up over one fourth of the entire catch. The estimated amount of these young smelt taken in the last fifteen days of July is 165,375 pounds, or about 16,537,500 small fish. It is more than probable that this particular smelt is the principal food of the young salmon descending the Sacramento River.

When the nets come to the surface of the water these small smelt are dead, so that to throw them back would do no good. The only way to prevent this destruction would be to stop the fishing entirely during the time from April to October, when these fish are so abundant.

The Chinamen save a good many of these young smelt, drying them on trays. They say they get 10 cents a pound for them.

During July they caught but few flounders. These were saved and dried, along with a few sculpins, etc., which are not eaten by any one else. During May and June the catch of flounders is very much greater than at the present time.

There is but one way to effectually stop this destruction of small smelt, and that is by prohibiting the catching of shrimps during the time when the young smelt are found in the bay, namely, April to October. The necessity for the passage of such a law should be impressed

upon the Legislature. Fully eighty per cent of the catch of the shrimp-fishermen is dried and sent to China. Why should our bay be depleted of small fish that the Chinese may carry on this export? We have caused the arrest of many of these shrimp-fishermen, and have maintained as close an inspection over their work as our force would permit, and by this means have to a considerable extent limited their destruction of small fish; but their camps are so scattered around the bay that the patrol has not been as effective as could be wished. The consumption of shrimps in a fresh state is considerable. They furnish a valuable and cheap food to a large number of people, but they cannot be taken without the destruction of other fish. The young fish are present in San Francisco Bay in considerable numbers between October and May, and during that time our markets are well supplied with an abundance of food fish, so that our people would not materially feel the withdrawal of shrimps during that time.

No other of our fishery interests so urgently demands the attention of the Legislature as this, for unless there is a close season placed upon this fishery it will be but a few years when the fish-food most desired by the spawning fish in the bay will be entirely destroyed.

SALMON.

Since the establishment of the salmon egg collecting station at Battle Creek, the output of salmon has been increased. The State has a practical protective salmon law, and a station where an unlimited number of salmon eggs can be obtained. We have now only to determine the best possible disposition of the young salmon, and to this study the Commission is giving full attention.

We have inaugurated a scientific investigation of the movements and food of young salmon in our streams, with every confidence that intelligent planting of fry will soon restore the harvest of salmon from our streams to its original proportions.

It is unquestionable that the work of the State in propagating salmon has maintained the supply in our rivers. Our figures given below show that it has done more than this—that they are increasing, which, considering the comparatively small numbers planted previous to 1895 and the thorough manner in which our rivers have been fished, must be considered a most gratifying record, for, under natural conditions the salmon of the Sacramento River would have been decimated.

The supply of salmon handled in the San Francisco markets continues to show a satisfactory increase, and prices have been lowered during the months of full supply.

In considering the salmon supply of the State, it should be remembered that the table which follows shows only the fish handled in the San Francisco markets, as taken from the books of the principal dealers there. No very accurate data can be obtained of the large amount

which goes to the interior consumers direct from the fishermen, but it is safe to estimate the receipts of the San Francisco markets as representing seventy per cent of the fish handled in a fresh state. From this showing, the great importance to our people of this fishery product is manifest, as well as the reasons why we have devoted so large a part of the appropriation and our efforts toward increasing it.

The effect which our efforts in propagating salmon have upon the market price of all other fish is easily demonstrated. The salmon is the favorite fish in our markets, and, excepting a very few other fish, such as trout, sturgeon, and pompano, sells for a higher price than any other fish offered. When salmon are abundant the price is low, and this necessitates the lowering of the price of all other kinds in order to sell them in competition with salmon; hence the propagation of salmon increases their supply and lessens the price of all varieties of fish to the consumer, and accomplishes the end for which the Commission was created and is supported.

The following table shows the receipts of salmon in the San Francisco markets from 1893 to July 1, 1898:

Salmon Received in the San Francisco markets.

Month.	1893.	1894.	1895.	1896.	1897.	1898.
January	137,460	128,556	161,641	168,366	276,402	310,499
February	93,263	103,801	146,250	173,278	242,710	78,348
March	139,401	163,131	155,791	197,043	331,421	85,000
April	374,478	211,552	365,387	301,964	488,425	332,072
May	325,170	242,126	401,787	291,310	404,035	513,631
June	70,216	138,675	161,989	134,922	278,010	303,396
	1,139,988	987,841	1,392,845	1,266,883	2,021,003	1,622,946
July	149,217	117,516	115,592	91,292	176,285	----------
August	575,609	576,991	447,094	399,362	721,385	----------
September	----------	----------	----------	----------	381,522	----------
October	249,753	403,340	----------	----------	76,647	----------
November	183,789	276,768	431,453	350,707	342,359	----------
December	155,090	192,153	326,474	298,189	258,137	----------
Totals	2,453,446	2,554,609	2,713,458	2,406,433	3,979,500	----------

SALMON PACK.

The canning operations on the Sacramento River are regulated by the market demands for the fresh fish. Until this demand is supplied the canners cannot compete with the dealers. The pack on the river, therefore, represents the supply in excess of the market demands. During a season like that of 1896, the pack was small, though the total catch exceeded that of 1895, when the total pack was less. This result was produced in 1896 by the fish coming into the rivers during each of the first six months in large numbers, instead of all coming during April and May as usual. This permitted the fish being handled by the marketmen. In the early years of this fishery the canners were the main factors in disposing of the catch, but with the increase of population and the

opening of markets in the interior the cannery interest became secondary, and no longer controls the supply. The canneries act as the safety valve of the salmon catch and preserve only the surplus. The pack on the Sacramento River since 1888 is as follows:

Salmon Pack of the Sacramento River.

Year.	Cases.
1888	61,200
1890	25,065
1891	10,353
1892	2,281
1893	23,336
1894	28,463
1895	25,185
1896	13,387
1897	38,543
1898	29,731

SALMON DISTRIBUTION.

Being now assured of securing millions of salmon eggs annually from the Battle Creek station, we have been compelled to find additional waters for the distribution of the output of salmon fry from our hatcheries.

Until the winter of 1896 all the salmon propagated by the State had been planted in the streams tributary to the Sacramento River near its source, and these waters afforded ample feeding grounds for the young fish up to that time; but with the enormous increase of the output we were obliged to extend the work to other streams. During the winter of 1896 we made plants in Klamath River near Kalmathon, and in the coast streams in Marin and Sonoma counties.

In 1897 we built and operated a hatchery on Eel River, in Humboldt County, and that season's hatch of eight millions was planted in Eel River. This was the first direct effort made to increase the run of salmon in that locality. After consideration of ways and means for the distribution of our enormously increased output of salmon fry, this Board, with the valuable coöperation and suggestions of its Chief Deputy, concluded to try the experiment of hatching eggs at our auxiliary hatchery at Olema. Our experience has taught us that the salmon at a very tender age seeks its natural home, the sea. Specimens less than four inches in length have been taken in smelt seines on the Presidio beach. We could see no reason why liberation within ten miles of salt water in streams free from predatory fishes or water animals should not be beneficial to the fry and allow a greater percentage to enter the ocean, rather than to put them to a three hundred mile course down the Sacramento, through which they must run the gauntlet of a thousand dangers. Another moving consideration was the fact that our plants in the Sacramento and its tributaries were likely to overtax the food capacity of these waters.

We desired, also, to so conduct our experiments as to permit full opportunity of studying the movements, growth, food, and habits of the fry. To this end, we selected Olema and Paper Mill creeks in Marin County. These streams were utter strangers to the Quinnat salmon, and we were therefore assured that any fish taken by us after liberation must necessarily be of our hatch.

The streams were all small enough to disclose the movements of the fish, which were easily seined. All these streams finally join, and their waters run but three miles before entering Tomales Bay. At this point is formed a considerable body of fresh and brackish tide water, through which the young salmon pass in entering salt water. This condition is similar to that found by the young fish at the end of their descent of the Sacramento River.

Added to these natural advantages, we possessed a small but well-equipped hatchery on Bear Valley Creek, near Olema, where the eggs could be hatched, and from which the fry could be distributed. For these reasons the experiments and observations were conducted in that vicinity.

Owing to scarcity of funds for carrying on this work, we appealed to the United States Commission of Fish and Fisheries to assist us, presenting our reasons for desiring to carry on the work. Our appeal met with a ready response from Commissioner Brice, who assigned $500 to defray the expense, and detailed a trained assistant to study the results of the plants for two months, after which we carried on the work through the early summer months.

The details of this work are set forth in full in the Appendix of this report, from which we make the following brief summary:

The young salmon were planted upon the absorption of the yolk sac. It was found that the young fish did not pass up the stream above the point where they were liberated. From the first, they passed rapidly down the stream, though a few lingered in favorable stretches of the creeks for weeks. Few specimens were captured after entering salt water, but those which were secured showed a much more rapid growth during the first two months than those taken from fresh tide water, having attained more than double the size. We present drawings showing the comparative sizes of the specimens taken from the fresh, brackish, and salt waters.

It was discovered that the trout and other fish found in the streams did not prey upon the young salmon. The stomach contents of hundreds of trout and other fishes were examined without finding a single specimen of either young salmon or trout.

Experiments were again carried on for a limited time in 1898 by the United States Commission, but the work was dropped shortly after the fish were planted, owing to lack of money, with the result that very little valuable data was obtained the past season from Olema.

In addition to the work carried on at Olema, we caused a study to be made of the movements of young salmon in the streams near the Sisson hatchery and down the Sacramento River as far as Redding during the season of 1897; and in 1898 we covered the same field and extended the work to the city of Sacramento.

At our request, and upon a showing of the importance of this work, the United States Commissioner of Fish and Fisheries, Hon. Geo. M. Bowers, detailed, in the spring of 1898, a trained force to study the life of the young salmon in the Sacramento River, and Suisun, San Pablo, and San Francisco bays, and this work is now being carried on by them.

We set forth the necessity for this work in our Fourteenth Biennial Report, and have since advanced it in every way. We believe the work thus begun will ultimately be of great advantage in the distribution of our output of fry, and result in a consequent increase in the productiveness of our salmon rivers.

SALMON IN THE SAN JOAQUIN RIVER.

Formerly there was a considerable run of salmon in the San Joaquin River, but as a result of mining and the diverting of water for irrigation, the run has decreased until now it is confined to a short period in the fall. This fall run does not seek the extreme headwaters to spawn as formerly, and while a few enter the Stanislaus and Merced rivers, the majority seem to prefer the San Joaquin proper.

It is an interesting feature in regard to the movements of the spring run of salmon to note that very few pass up the San Joaquin River beyond Georgiana Slough, but having passed up the river to that point most of them turn and go through this slough to the Sacramento, this being their last opportunity to leave the San Joaquin and enter the Sacramento.

The water of the San Joaquin River during the spring run is at its highest stage, and is cooler than in the fall. Why the spring run does not go up this stream instead of preferring the Sacramento, while some of the fall run continue up this river, presents a phase of the salmon's habits that remains unsolved. That the condition described is well recognized by the net-fishermen is proved from the fact that none of them are to be found above Jersey Island in the spring, while a number of boats are used above that point in the fall.

In commenting upon the peculiar movements of the salmon in our rivers, it may be of interest to note that there is a spring run of salmon in Smith and Klamath rivers, in Del Norte County, and in the Sacramento River, but no spring run in Eel or Mad rivers in Humboldt County. They run in Eel River only in the fall and early winter months. Why there should be no spring run there, while the principal rivers to the north and south are frequented by them, is another one of the many unaccountable peculiarities of this remarkable fish.

THE SALMON LAW.

The present law—the Act of 1897—regulating the fishing for salmon, affords these fish the protection their movements make necessary, as the closed season prescribed for their capture permits of their passage to and protection upon the spawning grounds. As a result, an increased number of salmon eggs have been taken at the egg-collecting stations. This law has given general satisfaction to our fisher folks, save in Tehama and Shasta counties; and we believe the dissatisfaction existing in those counties arises from a lack of full knowledge of the habits and movements of the salmon. When the habits of this fish are carefully observed, we do not believe that any fair-minded citizen will fail to appreciate the necessity of protecting it in the waters of these counties during the months of October and November.

The salmon is anadromous. When mature, it comes in from the sea, passes to the headwaters of our large rivers, deposits its spawn, and dies. The eggs hatch, and the young fish descend the rivers to the sea, where they mature.

The salmon enters the rivers from the sea in large numbers in April and May, and again in August, September, and the early part of October. There are a few entering the rivers every month, but there are pronounced runs in the months mentioned. Those that enter the rivers in the spring, and escape the nets, because of the Saturday and Sunday closed season and the high stage of water, pass to the extreme headwaters of the Sacramento, Pitt, and McCloud rivers with little trouble, where they remain until August and September, when they spawn. The fish that enter in August, September, and the early part of October have much more to contend with in the ascent of the streams. They are confined to the main channels, the water is of a higher temperature, shallow and clearer, they find themselves exposed to view in the pools and upon many of the riffles, and are sought for by man and beast. These fish that enter the river in the fall do not pass up to the extreme headwaters reached by the spring run, and they spawn in October and November.

The salmon is a prime article of food when it comes from the sea and during the early part of its life in the rivers. It deteriorates in fresh water, and as the breeding season approaches becomes soft and is attacked by disease, so that but few of the fall run fit for food reach the spawning grounds of the Sacramento River in Tehama and Shasta counties.

Under the law, these fish cannot be taken after September 10th, with the result that the fishermen in the lower rivers are compelled to take their nets from the river and permit the salmon an unobstructed passage up to their spawning beds in Tehama and Shasta counties, although the run is at its height, and the fish are in prime condition and demand.

The fishermen, marketmen, and canners know and appreciate that a considerable number of these fish must be permitted to reach their spawning beds in order to perpetuate the supply. Under the law, no salmon can be caught between September 10th and October 15th, and after that only in tide waters until November 15th. This opening of the tide water to fishing on October 15th does not benefit the fishermen on the lower Sacramento River to any extent, for the reason that the run there is over before that time. The fishery interests of the Sacramento and San Joaquin rivers were agreed to a closed season until November 15th, for they receive no benefit from its opening on October 15th. Therefore, the persons who claim that the law discriminates in favor of the fishermen in Solano and Contra Costa counties during September, October, and November, and against those in Tehama and Shasta counties, are in error.

In reading the law without a knowledge of the movements of these fish in the different rivers of the State, there does appear to be a discrimination, but with this information no such contention can be maintained.

The tide-water clause of the law was enacted to permit the taking of salmon in Eel and Mad rivers in Humboldt County, where the conditions are very dissimilar to those in the Sacramento River. There is no spring run of salmon in the rivers of Humboldt County. They enter Eel and Mad rivers only in the fall and winter. The run does not begin until about October 15th, and continues until January.

Under the Constitution, regulations may not be made permitting the catching of salmon in the Sacramento River during certain months and in Eel River at a different time. It would be special legislation. The Legislature, therefore, wisely framed the present Act, authorizing the catching of fish entering our rivers after October 15th, provided they were taken in tide water, thus permitting the catching of the run of salmon in Eel River. The fish that enter the rivers of Humboldt County in October are in prime condition, like those that enter the Sacramento River in August and September, and constitute our market supply of first-class salmon during November, December, and January. There can be no objection raised to the catching of these fish in the tide water of Eel River, as the distance is short; and by reason of the Saturday and Sunday closed season a sufficient number are permitted to ascend the river and pass to the spawning beds to insure their reproduction.

As we have stated, the tide-water clause of the law avails the Sacramento River fishermen but little, and was enacted to enable the Humboldt County fishermen to catch the fish in Eel River, thus affording our markets a supply without interfering with the natural and artificial reproduction.

If the fish that enter the lower Sacramento River after September 10th are to be taken at all, they should be caught while they are in fit

condition to market. If the change in the law desired by some of the people of Tehama, Shasta, and Butte counties, *i. e.*, to permit them to be caught in October and November, were granted, it is not to be supposed that the fishery interests of the lower river, which is the greatest in the State, would consent that the closed season begin at the height of the run, on September 10th, and if the taking of fish in the lower river were permitted during September and October, very few would be enabled to pass up the river to Tehama and Shasta counties in the fall. The fishermen would gain but little and the salmon interest would be destroyed.

As a matter of fact, the residents of Tehama and Shasta counties are the gainers from the present law to a greater extent than any other section, and are not the losers, for the reason that the principal salmon propagating station is carried on at Battle Creek, in Tehama County, near the Shasta County line. The State and National Fish Commissioners expend 100 per cent more money and employ 100 per cent more men in that section than were interested there in this fishery before the law was passed. The Commissioners expended at the Battle Creek station in 1895 over $5,000, in 1896 $7,500, and $10,000 in 1897 for labor and material in collecting salmon eggs. The laborers employed were mainly residents of Tehama and Shasta counties. The fish taken at the station that were fit for food, after being manipulated, were given away to whoever applied for them—over six hundred families were given fish in 1897. Thus, hundreds of residents of these counties were benefited, and most of these people would have received no fish under an open season law.

Our contention, then, is that a greater number of the residents of Tehama and Shasta counties reap benefit from the present law than from the old. The fishery produces more money to the county, more men find employment and for a longer period, and the salmon interest of the State is fostered instead of being destroyed. As it is necessary to protect these fish during the spawning period, it is fortunate for the counties of Tehama and Shasta that the State expends its moneys each season among their residents for the propagation of salmon. We submit, therefore, that the present law should not be changed or amended in any particular, since for the first time in the history of the State we have a law that permits the marketing of the greatest number of salmon possible, and yet gives these fish the protection necessary for their propagation, and which they must have in order to perpetuate their run. Under this law, the markets are supplied with an abundance of fish in prime condition, the hatcheries are filled with all the spawn they can handle, and if the provisions made by the State for disposing of the fry produced are executed with care, the run of salmon must increase.

We are constantly asked what proof we have that the work of propagation of salmon has been of benefit to the State. In reply, we refer to the figures of the number of pounds of salmon sold in the San Francisco markets each year. These figures are reliable so far as they go, but they do not show all of the fish marketed in that city. They have been taken by our deputies from the invoice books of only the leading fish-dealers. It may be added in passing that only these leading dealers keep any record. While these figures do not show a remarkable increase from year to year, they do show an increase; while before the State began the work of propagation, the records show that the fish were diminishing from year to year, and at an astonishing rate. Had the State failed to take up this work, the product of our rivers would have ceased by now. As it is, the Sacramento River is the only salmon river on the coast that shows an increase year after year. Some critics of this work have expressed surprise that the work of propagation has not produced greater results. We think they lose sight of the fact that fishing has increased; that irrigation and cultivation of our valleys have cut off the extent of fish-rearing waters; that with the increasing settlement of our lands, natural production has almost ceased; and that in the natural order of events there would be no run now but for the propagation which the State has carried on. We do not desire to be understood to say that there is a marked sentiment that questions the success of the State in this line of its work, for the converse is true. The interest of our people in this work continues to increase.

SPINY LOBSTER.

The spiny lobster fishery shows an increased product. The closed season has been strictly observed. In addition to the restrictions placed upon their capture we believe the catching and possession of egg-bearing female specimens should be prohibited at all times.

The following statement shows the receipt of lobsters in Los Angeles markets during the past three years:

The Spiny Lobsters taken in Los Angeles County.

Month.	1895.	1896.	1897.	1898.
January	9,502	14,153	8,908	21,098
February	9,225	12,669	6,930	23,915
March	19,765	11,045	18,334	33,386
April	15,114	10,830	22,210	25,382
May, to the 15th	5,743	4,851	9,049	9,873
July, from the 15th	8,891	14,237	10,205	
August	14,323	13,060	16,418	
September	15,056	15,104	21,525	
October	17,129	15,845	23,436	
November	13,917	12,357	17,400	
December	15,073	7,060	21,995	
Totals	143,738	131,211	176,410	

SHAD.

The supply of shad continues far in excess of the demand. As heretofore, the principal supply is taken from San Pablo and Suisun bays. Large numbers, however, are taken in the Sacramento River and its tributaries as far north as Tehama County, and in the San Joaquin and its tributaries as far south as Fresno County. The thousands of pounds taken in the rivers can only be estimated. It is a large and valuable product, and not yet fully appreciated by our people. That the value of this fish is not more highly prized in this State has often been commented upon by Eastern authorities, and can only be accounted for by the bountiful supply of less bony fish offered in our markets. This fish seldom yields the fishermen over half a cent per pound, and at times they are retailed in our markets for 5 cents each, regardless of weight.

The figures given below represent only the supply as found on the books of the wholesale dealers in the San Francisco markets and do not include the fish that are sold by the fishermen direct to the hucksters, nor does it include those handled in the interior valleys.

Number of Pounds of Shad Received in San Francisco Markets.

Month.	1893.	1894.	1895.	1896.	1897.	1898.
January	2,774	41,266	369	4,600	5,672	15,696
February	8,781	11,767	2,106	6,000	13,338	48,745
March	10,019	17,747	14,257	14,375	88,853	62,780
April	32,389	39,115	23,960	75,625	104,373	215,175
May	80,557	57,823	36,729	95,392	120,531	65,343
June	36,184	22,027	25,787	38,620	47,482	23,136
	170,704	189,745	103,208	234,612	380,249	430,975
July	3,319	7,754	3,213	8,151	5,467	
August	2,796	1,764	805	27	1,725	
September	698	475	3,317	2,264	9,116	
October	53,652	23,496	5,788	4,383	6,957	
November	96,340	37,987	23,534	14,926	19,898	
December	77,882	8,158	6,534	10,404	21,138	
Totals	405,391	269,379	146,399	274,767	444,550	

STRIPED BASS.

The striped bass continue to multiply. During the past two years it has been sold for less than salmon. It is for sale every month in the year for less than the New York and Philadelphia quotations. As interesting and remarkable as this showing may be, it is doubtful if the yearly increase as expressed in the market figures is not due more to the improved methods of fishing than to the actual yearly increase of these fish in our waters. Our fishermen have now become familiar with their habits and movements and are expert in pursuit of them. They began to catch them in the latter part of the '80's, but as late as '94 they had not become sufficiently acquainted with their habits to take full advantage of the runs. Striped bass move in large, compact schools and are easily alarmed. They must be approached with caution. In favorable waters

at the proper stages of the tide the fishermen silently lay out their nets around the school. Every oar is muffled and every precaution taken that neither the lead nor the cork lines shall strike the boat, otherwise the school is scattered and the greater part is lost. This the fishermen now fully understand, with the result that they secure much greater numbers than formerly.

While the market receipts show an increase in these fish, we believe that they should be protected for a part of their spawning period. We therefore recommend that the month of June be declared a close season for capture or sale. A large per cent of the fish offered for sale during the months of May and June are spawn fish, and their flesh at that time is soft and flavorless. As they frequent the waters through which the salmon pass to their spawning grounds, many are taken in the salmon nets during April and May. The run of salmon in these waters is very light during June. To prohibit the catching of striped bass during that month would not materially interfere with the capture of salmon, and would afford the bass ample protection, though they chiefly spawn in May. Should the month of June be made a close season, we recommend that the restriction prohibiting the possession and sale of striped bass of less than three pounds in weight be amended so as to allow their sale when not less than one pound in weight.

The following table shows the market receipts of these fish in San Francisco since 1893:

Number of Pounds of Striped Bass Received in San Francisco Markets.

Month.	1893.	1894.	1895.	1896.	1897.	1898.
January	3,041	14,177	28,328	27,179	25,081	18,206
February	2,752	12,572	15,611	36,107	31,271	21,060
March	5,190	9,002	11,281	38,340	36,448	31,215
April	8,351	9,638	22,000	41,740	45,550	101,400
May	7,232	9,413	12,639	45,903	36,765	59,752
June	4,353	4,820	11,532	15,047	18,011	31,511
	30,919	59,622	101,391	204,316	193,126	263,144
July	2,950	7,273	13,782	13,531	19,882	----------
August	2,655	5,956	12,419	15,574	23,279	----------
September	8,517	10,021	21,063	24,214	34,114	----------
October	6,720	22,591	28,724	40,704	33,921	----------
November	10,473	17,319	50,245	40,089	31,718	----------
December	17,504	21,972	24,553	25,319	22,154	----------
Totals	79,738	144,754	252,177	363,747	358,194	----------

CRABS.

Our large edible crab (*Cancer magister*) continues in full supply. The law prohibiting the capture and sale of the female has been favorably received by the fishermen, and is closely observed. This seems to be the only necessary restriction upon this fishery. The principal market supply is taken from the ocean off San Francisco to the north and south of the Heads.

No very accurate estimate of the value of this fishery can be given, owing to the method of marketing the catch. Only a small percentage



is handled by the regular fish-dealers. Many hucksters obtain their supply direct from the fishermen. The supply has been abundant and the price low. This is one of the most valuable varieties of the food crabs of the sea. Efforts are being made by the United States Fish Commission to propagate them in Atlantic waters. The experiment of introducing them upon the Los Angeles coast, made by this Commission in March, 1896, has, up to this time, produced no apparent result.

During the season of 1897 the United States Fish Commission forwarded us a shipment of the blue crab of the Atlantic coast, which were planted in San Francisco Bay, where the conditions are favorable for their propagation. If they establish themselves in our waters they will make a valuable addition to our supply of aquatic food.

CATFISH AND CARP.

The catfish is one of the finest flavored fish in our waters, and the demand is in excess of the supply. This statement may be doubted by many people who have denounced their introduction, claiming that they have destroyed other and more valuable fish. The fallacy of this position may be understood when it is known that the shad and striped bass propagate in waters most frequented by catfish and carp.

The figures for catfish given below are for dressed fish only. They are taken from the books of the dealers, other than Chinese, in San Francisco markets. The Chinese dealers do not keep books that are intelligible to our deputies, so that the large quantities of catfish and carp handled by them are not shown in the following table. There is little demand for carp. These fish, that are so highly prized in Europe and which find a ready sale in many of the Eastern markets, are not desired by our people. The Chinese handle most of the carp in this market.

Number of Pounds of Carp and Catfish Received in San Francisco Markets.

Month.	1893.		1894.		1895.	
	Carp.	Catfish.	Carp.	Catfish.	Carp.	Catfish.
January	624	1,175	10,142	4,117	6,017	568
February	519	1,766	4,755	1,696	3,755	680
March	4,356	2,988	6,798	4,766	3,851	831
April	3,101	3,705	2,839	5,290	1,568	2,358
May	560	3,265	767	2,978	555	3,644
June	1,469	2,155	699	2,630	650	3,151
	10,629	15,054	26,000	21,477	16,416	11,232
July	4,570	2,299	729	695	560	753
August	1,665	710	383	357	150	1,159
September	1,132	5,800	4,396	2,748	785	3,257
October	3,782	5,547	4,969	2,795	1,355	7,162
November	5,969	3,932	4,461	1,526	4,043	3,047
December	5,337	3,202	1,642	1,867	3,555	5,672
Totals	33,084	36,544	42,580	31,465	26,864	32,282

Number of Pounds of Carp and Catfish Received in San Francisco Markets.—Continued.

Month.	1896.		1897.		1898.	
	Carp.	Catfish.	Carp.	Catfish.	Carp.	Catfish.
January	22,045	3,896	3,916	1,520	9,644	3,765
February	13,159	2,714	2,756	1,728	8,148	6,452
March	8,659	4,807	2,122	5,739	10,674	5,490
April	4,282	3,461	2,161	7,876	5,490	7,240
May	1,913	9,160	160	6,602	2,200	9,433
June	2,437	4,830	974	3,331	1,800	6,917
	52,495	28,868	12,089	26,796	37,956	39,297
July	560	950	400	2,573		
August	151	3,480	995	3,959		
September	893	6,333	105	3,336		
October	1,428	4,980	4,305	6,187		
November	3,500	6,784	3,529	6,260		
December	2,020	3,011	2,795	4,949		
Totals	61,047	54,406	24,218	54,060		

We are often questioned regarding the results of propagation and acclimatization of the carp in the waters of California, and are always confronted with the statement that its introduction has resulted in great injury to the waters and to our native fish. There is no doubt that they have damaged some of the water of this State by discoloring it. This is particularly the case in Lake and Mendocino counties. There seems to be no way by which the carp can be exterminated in Clear or Blue lakes. The success of the Spring Valley Water Company in clearing them out of Lake Merced by means of sea lions has led to the suggestion that the introduction of sea lions in Clear and Blue lakes might bring about the same result. We do not believe this possible in such extensive bodies of water, because the swamp and tule lands surrounding these lakes would harbor the carp and furnish them with breeding and rearing grounds that the sea lions might not reach. Large numbers of black bass have been liberated in these lakes, and it is claimed, as a result, that Clear Lake is less discolored than formerly. We have endeavored to obtain a shipment of pike perch from Eastern waters, in the hope that they might assist in reducing the carp in these waters. This is one of most voracious as well as one of the finest fresh-water fishes. We consider its introduction for these purposes desirable, and shall continue our efforts to secure from the United States Commission a shipment of this species.

The introduction of carp is, however, not without benefit to our waters. They are continually sold in the San Francisco markets and in the interior along the Sacramento and San Joaquin rivers, and have furnished an abundance of food for the striped bass. They have been of no injury to other fish, as is clearly demonstrated by the excess of shad and striped bass which propagate in waters most frequented by carp.

In discussing the subject of introducing foreign fish, the carp question seems to be more generally misunderstood and commented upon than the great value resulting from the introduction of striped bass and shad.

STURGEON.

The supply of sturgeon continues to be far below the demand, and it is now one of the highest priced fish in our markets. The law protecting them was enacted in 1895, and sufficient time has not yet elapsed to produce any visible change in the market supply, but reports come to us from many sections announcing the presence of these fish in waters where they have not been seen for many years. The law protects them during a part of their spawning season and prohibits the use of the Chinese set-line. It also places a limit upon the size of the young fish that may be taken or sold. The law as it stands meets the approval of the intelligent class of our fishermen and dealers. It is surprising that only a few years ago large numbers of these fish were annually destroyed by the river and bay fishermen as being of no market value, while during the past three years their flesh has been sold for higher prices in our markets than salmon or striped bass. Experiments in the propagation of sturgeon have been conducted in the United States and in Germany, but thus far with limited success.

The following table shows the amount of sturgeon handled in the markets of San Francisco during the past two years:

Number of Pounds of Sturgeon Received in the San Francisco Markets.

Month.	1896.	1897.	1898.
January	34,181	28,634	21,189
February	26,955	25,274	36,711
March	18,625	16,040	----------
September	15,791	20,533	----------
October	20,892	32,041	----------
November	27,802	37,692	----------
December	31,429	30,231	----------
Totals	175,675	190,445	----------

MARKET SUPPLY OF TROUT.

The principal supply of trout offered in our markets continues to come forward from the Lake Tahoe region and Pyramid Lake in Nevada, though there is a considerable supply taken from the Klamath River. Owing to ordinances passed by the Boards of Supervisors of El Dorado and Placer counties, continuing the closed season for the capture of trout until June first, the receipts from that section were cut off during April and May of 1898. As the fish taken from Lake Tahoe and its tributaries at that season are spawn fish, which are soft and flavorless, the consumers can well afford to forego the supply for these months.



STRIPPING SALMON, BATTLE CREEK, 1897.

EXPORTS. The export of fishery products from San Francisco during the past six years is shown in the following table, which was furnished by the United States customs officials, San Francisco:

Value of Exports of Fishery Products from San Francisco.

Article.	1892.	1893.	1894.	1895.	1896.	1897.
Codfish	$26,681	$21,412	$16,557	$21,945	$15,548	$13,956
Dried fish	34,439	27,043	39,558	20,351	28,543	37,796
Salmon, canned	1,810,567	621,336	1,766,619	2,285,711	2,382,008	2,239,602
Salmon, in barrels	46,986	44,157	43,028	42,756	49,180	65,985
Other canned fish	10,715	9,828	13,397	25,820	16,253	19,284
Oysters	9,655	7,432	7,369	7,151	8,334	7,765
Other shell-fish	226,063	188,532	167,453	179,734	173,460	181,362
Totals	$2,165,106	$919,740	$2,053,981	$2,583,468	$2,673,326	$2,565,750

THE HATCHERIES. The total output of fish from the State hatcheries during the past two years was 57,094,182. The work of each station is given in the following summary:

BATTLE CREEK STATION. In the last report of this Commission reference was made to the inability of the Commission to operate the salmon egg-collecting station located on Battle Creek, in Tehama County, to its full possibilities, and that the Board had arranged with United States Commissioner of Fish and Fisheries, John J. Brice, for the sale of the State's interest, thus insuring operation to its full limit. At the session of Congress in 1896, no appropriation was made to carry out this transfer, which resulted in the station being operated jointly by this and the United States Commission in 1896 and 1897. The United States Commission assumed the expenses of operation and advanced the necessary moneys for the construction of an additional building at the station. Our hatchery force, under the direction of our Chief Deputy, John P. Babcock, conducted the operations during both seasons. The result of this joint operation was most remarkable. During the season of 1896, twenty-six million eggs were collected, and in the season of 1897 forty-eight million. Each of these takes exceeded the total collection at all other stations on the coast during those years. The eggs collected during the season of 1896 were hatched and distributed from the hatcheries of this State with the exception of five million that were sent East to United States Fish Commission stations, and three million that were sent to stations in Oregon. In 1897, six million of the eggs collected were sent East, three million to Oregon, and the balance of thirty-nine million were hatched and planted in the waters of this State.

The location and operation of the Battle Creek station has been the most successful propagation work ever undertaken on this coast, and in its magnitude and importance equals any work of its kind in the world.

The results attained by the addition of this station have exceeded our greatest expectations, have crowded our hatcheries beyond their capacity, and have forced us to increase our hatching room. We have been enabled to extend our hatchery operations to Eel River in Humboldt County, thus insuring the continuance of the important salmon interests of that section.

In considering the value of the Battle Creek station and its importance to the salmon interests, it must be remembered that its value depends entirely upon the protection afforded the salmon during September, October, and November. If fishing were permitted during that time, the spawn fish would be caught before they entered the traps at the station and no eggs would be secured.

During the winter session of Congress in 1897, an appropriation was made for the purchase of the State's interests in the Battle Creek station, and negotiations are now pending for its transfer in accordance with the Act of the Legislature approved March 9, 1897.

Distribution of Salmon (Onchorhynchus tschawytscha) Eggs and Fry from Battle Creek Station—Seasons of 1896 and 1897.

Distribution.	Number of Eggs.	Number of Fry.
1896.		
California Fish Commission, Sisson	13,645,000	
Eastern stations	5,150,000	
Baird Station, California	2,000,000	
Clackamas Station, Oregon	3,000,000	
Olema Experimental Station, California	750,000	
1897.		
California Fish Commission, Sisson	16,000,000	
Baird Station, California	4,247,000	
Eastern stations	6,000,000	
California Fish Commission, Eel River Station	8,000,000	
Olema Experimental Station, California	2,000,000	
Clackamas Station, Oregon	3,000,000	
Hatched at Battle Creek Station		5,885,000
Totals	63,792,000	5,885,000

Total output for two years 69,677,000

EEL RIVER HATCHERY.

Fully appreciating the value of the salmon interests of Humboldt County, we determined to establish a salmon hatchery upon Eel River, and in August of 1897 we caused an investigation to be made of all available sites on the river, which resulted in the erection of a hatchery building upon Price Creek, a small tributary which enters from the south about twelve miles above the mouth. We regard the location favorably. The hatchery building is 60 by 40 feet, and has capacity for hatching eight million eggs. The supply of water is taken from the creek about half a mile above the building.

In the location and construction of this station we were given invaluable aid by Hon. J. N. Gillette, the Pacific Lumber Company, the Eel River Valley Lumber Company, and the merchants of Ferndale. Without this aid we could not have undertaken the construction at that time.

The building, dam, and flume are located upon land belonging to Mr. G. W. Weymouth, who gave the State a ten years' lease, upon the sole condition that the hatchery be operated annually.

The first eggs were received at the station in December, 1897. They were shipped from the Battle Creek station on the line of the Southern Pacific Company to San Francisco, thence to Eureka via the Pacific Coast Steamship line, thence by the Eel River and Eureka Railroad Company, free of all expense to the Commission. These transportation companies generously franked the shipments. The balance of the eggs were received early in January of 1898, and operations continued until February 7th, when the water system of the hatchery was damaged to such an extent by a flood that we were compelled to plant the entire hatch in Price Creek and Eel River one month in advance of our plans. However, we regard the operations as successful, and have rearranged our water supply in such manner as to prevent accident hereafter.

This station is a valuable addition to the hatcheries of the State, and by its operation we confidently expect to maintain and increase the catch of salmon in Eel River. It is not generally known that the market supply of salmon of the State is obtained from Humboldt County during October, November, December, and January. Over a million of pounds of salmon are shipped to San Francisco markets during that period.

Eel River has no predatory fish save trout, which makes it a most favorable stream in which to liberate young salmon. If the young salmon pass to the sea the first season after being hatched, as we now believe they do, this station is most favorably located, it being less than fifteen miles from the sea.

Summary of Distribution of Salmon from Eel River Hatchery—Season of 1898.

Species.	Number.
Salmon	7,857,388

THE SISSON HATCHERY.

During the fall of 1896 we enlarged the hatchery located at Sisson by the construction of an addition to the original building, of 60 by 40 feet, thus doubling its capacity. The expense of this improvement was met by drawing upon the Fish Commission Fund. This hatchery is now the largest and best equipped of any of the State's stations, and has a capacity for hatching sixteen million salmon eggs at one time. The station has been operated to its fullest extent during the period covered by this report, with the result that the output of salmon fry has exceeded that of any previous two years since the organization of the Commission, by more than 100 per cent; and the output of trout from the station has equaled the work of any previous season. The United States Commission of Fish and Fisheries, as heretofore, has furnished us with most of its collection of summer and early fall take of salmon eggs at its Baird station. This early take of eggs fortunately can be hatched and removed from the building before the eggs collected at Battle Creek station are forwarded. This will explain how, with a hatching capacity of sixteen million, we can hatch twenty-one and a half million of salmon eggs in a season. We continue to lease the Sisson and Klink ponds situated near the Sisson hatchery, which, together with the State ponds at the station, gives us a considerable retaining and nursing capacity, though there is need that this be increased. The mature Loch Leven trout in the Emeric pond were spawned for the first time in October, 1897, and produced three hundred thousand eggs. These were the first eggs of this variety taken by this Commission. The manipulation of these fish was accomplished without loss, and they were returned to the pond. We expect a large increase of eggs from these trout this fall. In Klink's pond we have three thousand adult Brown trout, which we expect to spawn this season. The Sisson pond is stocked with mature big-mouthed black bass imported from the East in 1896. They spawned for the first time in 1897, and we made shipments of a part of the young. The increase of the past season, which is large, will be distributed this fall. As we have remarked, the Sisson hatchery is the largest and most productive of the State's hatcheries. In the ponds connected with the hatchery we have every variety of salmon, trout, and black bass native to or introduced into the waters of the State, besides yellow perch and green sunfish; also pond shiners, which we are propagating for fish food. An examination of the following table discloses the magnitude of our work at this station. It is unequaled by any similar station in the West. The total output of fish for the years 1897 and 1898 is 41,591,454.

Summary of the Distribution of Fish from Sisson Hatchery—Seasons of 1897 and 1898.

Species.	1897.		1898.	
	Fry.	Yearlings and Adults.	Fry.	Yearlings and Adults.
Salmon	17,268,000		21,601,000	
Cut-throat trout	878,500		900,000	
Rainbow trout			475,000	
Mackinaw trout	98,000			7,000
Loch Leven trout	13,000	1,109	260,000	
Eastern Brook trout		30	85,000	
Brown Brook trout		160		6,000
Landlocked salmon				700
Large-mouthed black bass	750	205		
Totals	18,258,250	1,504	23,321,000	13,700

In order to enlarge the nurseries for the propagation of fish we have arranged to purchase five acres of ground adjacent to the property owned by the State at Sisson, upon which we will begin the construction of rearing and breeding ponds.

TAHOE AND TALLAC HATCHERIES.

Operations were successfully conducted at the Lake Tahoe hatcheries during the seasons of 1897 and 1898. All our supply of trout eggs in 1897 was obtained from this lake. Seining operations were conducted at the mouth of Taylor Creek, near Tallac, and the eggs collected were eyed at the Tallac and Tahoe hatcheries. The trout eggs hatched at Sisson and Ukiah hatcheries were shipped from here. The water supply at the Tahoe hatchery is limited and we have not increased the output as we otherwise should have done.

The conditions affecting the fishing interests of Lake Tahoe have been greatly improved by the timely action of the Boards of Supervisors of El Dorado and Placer counties in extending the closed season at the lake until June first. The fish of this section spawn during April and May, and previous to the past season the market fishermen have annually taken large numbers of these spawn fish from the lake in the vicinity of the mouths of the tributary streams, thus destroying numberless thousands of eggs. The collection of trout eggs at the lake the past season could have been two million in excess of any previous season's work had the water supply of the hatcheries permitted. As it was we ceased operations early in May, 1898, at a time when the run of spawn fish was still large. We maintained a constant patrol of the lake and its large tributary streams during the past season, with the result that the Nevada Indians were not permitted to make their annual descent upon the spawning fish in the creeks, and a notable increase in young fish must have resulted. The effectiveness of this patrol of Lake Tahoe was increased by the timely assistance rendered by the game warden of Placer County. In this connection we beg to recom-

mend to the Boards of Supervisors of all mountain counties the great importance of passing ordinances shortening the open season for the taking of trout. It is common knowledge that fish in the higher altitudes spawn from six weeks to two months later than they do in the valley. Therefore, to insure constant reproduction the fish should be protected to a later date in the northern and northeastern counties.

The output from the Tahoe and Tallac hatcheries for the past two years was 4,402,900 fish, and 3,550,000 eggs were shipped to other hatcheries, as is shown by the following table:

Summary of Distribution of Fish from Tahoe and Tallac Hatcheries During 1897 and 1898.

Station.	Point of Shipment.	1897.		1898.	
		Eggs.	Fry.	Eggs.	Fry.
Tahoe City	Sisson Hatchery	1,100,000		1,100,000	
Tahoe City	Ukiah Hatchery	750,000		300,000	
Tallac	Wawona Hatchery			300,000	
Tahoe City	Waters in vicinity		1,116,000		1,000,000
Tallac	Waters in vicinity		1,089,000		1,197,900
Totals		1,850,000	2,205,000	1,700,000	2,197,900

THE UKIAH HATCHERY.

During the season of 1897, Mr. A. W. Foster, President of the San Francisco and North Pacific Railroad Company, being desirous of adding to the attractions of the streams along the line of his road by thoroughly stocking them with fish, caused to be built at Ukiah a fish hatchery having a capacity of two million eggs, and arranged with us to supply the hatchery with trout spawn, upon an agreement from him that the fish should be planted in public waters. Mr. Foster employed competent men to operate the hatchery, and in the spring of 1897 we forwarded seven hundred thousand mykiss trout eggs to the Ukiah hatchery from the station at Tahoe. They were there successfully hatched, and afterwards liberated in the public streams of Marin, Sonoma, and Mendocino counties. In the spring of 1898 we again forwarded to this place two hundred thousand eggs from the Tahoe hatchery. The number was reduced because the water supply of the section was affected by the dry season. The addition of this hatchery has been and will continue to be of great assistance in stocking the 1200 miles of trout water in these counties.

Table of Distribution of Trout from Ukiah Hatchery.

Date.	Species.	Number of Fish.
1897	Tahoe Trout (*Salmo mykiss*)	700,000
1898	Tahoe Trout (*Salmo mykiss*)	200,000
1898	Steelhead (*Salmo gairdneri*)	260,000
	Total	1,160,000

OPERATIONS AT SIMS.

During the early part of the present year we caused traps to be placed in Mear's and Hazel creeks, tributaries of the Sacramento River near Sims, hoping to increase the output of rainbow trout. Owing to the lack of rain these creeks did not rise and the usual run of spawn fish did not attempt to ascend them, and our attempts failed. The location, however, is considered good, and we will renew the effort next year. The expenses of our work at Sims were borne by the Southern Pacific Company.

SHOVEL CREEK STATION.

The egg-collecting station located upon Shovel Creek, near Beswick, Siskiyou County, was not operated during 1897, because the fishway on the dam in the Klamath River, at Klamathon, was not in working order. A new ladder was placed upon the dam in the fall of 1897, which permitted a free run of fish during the spring of 1898. We began operations in March and worked until the 6th of May. The season's collection of rainbow trout eggs was 725,000. Of these, 200,000 were sent to Wawona and 500,000 to Sisson; 25,000 were hatched at the station and planted in Shovel Creek.

WAWONA HATCHERY.

The hatchery located in the Yosemite National Park, near Wawona, was not operated in 1897, because of our failure to procure eggs at the Shovel Creek station in the spring of that year, and owing to the fact that the road from Tahoe City to Truckee was impassable until too late to admit of our forwarding eggs from the Tahoe station. The high temperature of the water supply to the Wawona hatchery in June makes it necessary that the eggs hatched there be received early in May in order to insure healthy fish.

The conditions the past season being favorable, we operated the station. Three hundred thousand mykiss trout eggs were received at the station from Tahoe on May 4th, and two hundred thousand rainbow trout eggs were received from Shovel Creek on May 11th. The water used at the station is taken from Big Creek by means of a large open ditch. On the night of May 11th this ditch was broken by the work of gophers, which shut off the water from the hatchery for a considerable time, and resulted in the loss of about two hundred thousand eggs. For this reason the output from this station was smaller than we expected. The balance of the eggs was successfully hatched and distributed. The temperature of the water during both May and June did not rise above 67°, from which cause the fish planted were the best ever reared at this station.

Summary of the Distribution of Fish from the Wawona Hatchery During the Year 1898.

Species.	Number.
Tahoe trout	120,000
Rainbow trout	167,000
Total	287,000

In addition to the fish planted at Wawona in 1898, we forwarded a shipment of trout to the waters of Yosemite Park from the Sisson hatchery in 1897. Two shipments of Loch Leven and yearling Brown trout were made in 1898 to Yosemite Valley and adjacent waters.

BLACK BASS WORK.

The black bass fry distributed in the past two years were mainly taken from the landlocked overflow waters from Russian River. This river has become the best stocked bass stream in the State, and is the only one now affording black bass fishing. The deputies assigned to the work of collecting young bass from Russian River were those who have always been assigned to this work, and are painstaking, careful men. The parent fish seek favorable waters early in April and in May, in which they build their nests, deposit their eggs, and care for their young. During this time, and before the young bass are capable of caring for themselves, the waters in the river recede and many of the young fish find themselves landlocked. If they were permitted to remain they would die before the river again rises. The removal of these fish saves them, and we are thus enabled to obtain stock for other waters without levying upon those in the river. Our operations at this point have not been well understood by some of our sportsmen, who believe that our work has damaged the fishing in the river. The reverse is true, for many of the schools of fry are returned to the river when old enough to shift for themselves.

In the distribution of black bass we have aimed to stock all suitable waters. Particular attention has been given to the waters of the San Joaquin Valley.

Summary of Distribution of Black Bass During Seasons of 1897 and 1898.

Variety.	1897.		1898.	
	Fry.	Adult.	Fry.	Adult.
Small-mouthed	14,815	1,937	6,000	2,330
Big-mouthed	750	205		
Totals	15,565	2,142	6,000	2,330

The big-mouthed bass distribution for 1898 will not be made until November first.

The work of artificial bass propagation has never been successfully carried on. The only way to breed young fish is to confine the parent stock in ponds where they propagate naturally, and from which the young can be secured. In order to supply the necessary bass for stocking we have leased a number of suitable ponds in different sections of the State, which we have stocked. We hope to be able to obtain from them the necessary supply for stocking other waters.

The big-mouthed bass which we brought into the State in 1896 were retained in the pond at the Sisson hatchery until the summer of 1897, when we distributed a part of the increase.

The Sacramento and the San Joaquin valley sections offer many miles of suitable waters for black bass, and we have devoted much of our attention to stocking them, the success of which gives us every prospect of adding the black bass to the food fish supply of the State.

ACKNOWLEDGMENTS.

We desire again to express to you our full appreciation for the many courtesies extended. We also thank our people for the interest shown in our work. Their actions prove their great interest, and have made our work a pleasure, and have insured its success.

To Hon. John J. Brice, retired United States Commissioner of Fish and Fisheries, we desire to extend our sincere thanks for his generous assistance. Throughout his administration he and his able assistants have advanced the work of the National Fish Commission in this State in every possible way.

To Hon. George M. Bowers, present United States Fish Commissioner, we extend our acknowledgments for the able and courteous manner in which he has met all matters which we have presented to his attention. Many of the statistics used in this report were furnished by him.

To the Southern Pacific Company, the San Francisco and North Pacific Railroad Company, and the North Pacific Coast Railroad Company our thanks are due for free transportation of all our employés, apparatus, and fish. Without this very generous help our appropriations would have been utterly inadequate. In addition to free transportation, the railway employés have at all times assisted our men in every possible way when called upon to do so, and we also thank them.

To the Attorney-General, Hon. W. F. Fitzgerald, and his able and courteous staff, we are under deep obligation. They have been attorneys in fact as well as attorneys in name, and have ever been prompt and thorough in responding to our calls for advice.

To Major H. C. Benson, U. S. A., we are indebted for valuable help in transporting and stocking the waters of Yosemite National Park. During the season of 1897, Major Benson succeeded in placing fish in twenty-seven barren lakes and streams of the National Park. Owing to the withdrawal of troops from the Park this work was less effective in 1898.

We are much indebted to Messrs. Washburn Brothers, of Wawona; M. Lawrence & Co., of Tallac; Bliss Brothers, of Glenbrook; Pacific Coast Steamship Company, Mr. George Weymouth, Pacific Lumber Company, Eel River Valley Lumber Company, and Hon. J. N. Gillette, of Humboldt County, for donations and assistance in our hatchery work.

To the wholesale fish-dealers of San Francisco and Sacramento markets; to the Sacramento River Packers' Association, and to the Carquinez Canning Company, our thanks are extended for valuable information furnished.

We have been given valuable assistance by persons who hold commissions under our authority, who have received no compensation for their efforts in the enforcement of the laws. These outside deputies have regularly reported the conditions affecting their sections, and through their efforts we have promptly compelled many persons to observe the laws. To these men who have performed this labor of love we extend our sincere thanks.

RECOMMENDATIONS FOR AMENDMENTS TO THE LAWS.

For reasons heretofore set forth, we recommend that the following changes be made in the fish and game laws:

Section 623 of the Penal Code should be amended to prohibit the catching of steelhead trout with hook and line, *except* in tide water, between the first day of February and the first day of April.

Section 628 of the Penal Code should be amended to permit the possession and sale of striped bass of over one pound in weight, and to prohibit the catching, selling, or possession of striped bass between the first day of June and the first day of July.

The catching or sale of female egg-bearing lobsters should be prohibited.

The catching, possession, or sale of shrimps, fresh or dried, should be prohibited from May first to October first.

The killing or possession of any pheasants should be prohibited for an indefinite period. The present provision protecting them will expire in March, 1899.

Snipe should be protected, and the season for killing them should be from October first to March first.

The use of nets or traps in the capture of any kind of wild birds should be prohibited.

In conclusion, we beg to say that we feel a justifiable pride in the record of the Commission during the past two years. This report is submitted with full confidence that our work has never been surpassed in any biennial period since the creation of the Board.

We trust that we have herein demonstrated to our citizens and to you

that this is a business commission of great economic value. Our guiding principle has always been the protection and propagation of cheap and nutritious food for all the people of the State. The success that we have attained in this behalf has been rendered possible by the fair appropriation made at the thirty-second session of the Legislature, and we feel assured that an examination of the results of our labors by the members of the thirty-third Legislature will insure at least a similar allowance for the continuance of the work.

Yours respectfully,

ALEXANDER F. VOGELSANG.
C. B. GOULD.

Owing to lack of funds, the Appendix of this Report is not published in its entirety, but we are enabled to present the following extracts.

BOARD OF FISH COMMISSIONERS.

EXTRACTED FROM THE APPENDIX

OF THE

FIFTEENTH BIENNIAL REPORT.

STATEMENT OF FISH PLANTED BY BOARD.

NOTES ON THE PLANTING OF SALMON FRY, WITH PLATES.

IN THE MATTER OF DUMPING SAWDUST INTO THE TRUCKEE RIVER.

STATEMENT OF FISH PLANTED

BY THE

BOARD OF FISH COMMISSIONERS OF THE STATE OF CALIFORNIA SINCE THE ORGANIZATION OF THE COMMISSION.

Year.	Quinnat Salmon (*Oncorhynchus tschawytscha*).	Eastern Salmon (*Salmo salar*).	Land-locked Salmon (*Salmo sebago*).	Trout. Rainbow (*Salmo iridens*).	Trout. Cut-throat (*Salmo clarkii*).	Trout. Brook (*Salvelinus fontinalis*).	Trout. Dolly Varden (*Salvelinus parkei malma*).	Trout. Loch Leven (*Salmo trutta levenensis*).	Trout. Mackinaw (*Salvelinus amethystus*).	Trout. German Brown (*Salmo fario*).	Shad (*Alosa sapidissima*).	Whitefish (*Coregonus clupeiformis*).	Striped Bass (*Roccus lineatus*).	Catfish (*Ameiurus nebulosus*).	Carp (*Cyprinus carpio*).	Small-mouth Black Bass (*Micropterus dolomieu*).	Large-mouth Black Bass (*Micropterus salmoides*).	Pickerel (*Lucius lucius*).	Yellow Perch (*Perca flavescens*).	Green Sunfish (*Lepomis cyanellus*).	Golden Shiners (*Notemigonus crysoleucas*).	Glass-eyed Perch (*Stizostedion vitreum*).	Eastern Lobster (*Homarus americanus*).	Silver Eels (*Anguilla chrysypa*).	Muskellunge (*Lucius masquinongy*).	Tautog (*Tautoga onitis*).	Blue Crab (*Callinectes hastatus*).	Diamond-back Terrapin (*Malaclemmys palustris*).	Eastern Oyster (*Ostrea virginica*).	Totals.	
1871											*15,000																				15,000
1872					22,000	*6,000						*25,000																			53,000
1873											*35,000																				35,000
1874	850,000	*305*												*144*		*85*						*16*	*4*	*12*							850,566
1875	2,000,000					*60,000*						*20,000*																			2,080,000
1876	2,000,000										*99,000*																				2,099,000
1877	2,200,000			45,000		*133,000*					*110,000*	*300,000*		8,400	*88*																2,786,488
1878	2,500,000	*50,000*		35,500		*79,000*					*115,000*																				2,708,500
1879	2,300,000			61,200	50,000							*565,000*	*150*	39,000		*22*							*81*		*4,000*						3,019,393
1880	2,225,000			32,000		*41,500*					*240,000*			10,050	*208-12*																2,548,860
1881	2,420,300		*20,100*	23,600							*220,000*	*230,500*		2,662										*10*							2,917,362
1882	1,680,000												*300*	500	71																1,680,881
1883	690,000			95,000								*500,000*			300																1,195,300
1884			*25,000*	214,000										500																	239,500
1885				150,000																											150,000
1886	1,200,000			100,000																											1,300,000
1887	200,000			2,000,000	500,000																										2,700,000
1888	1,290,000			50,000	601,000																										1,941,532
1889	2,168,000				1,027,000											500															3,195,500
1890	1,320,000			996,000	873,000	*83,000*										357															3,272,357
1891	2,798,250				88,000																										2,886,250
1892	2,651,000			506,500		*317,000*										155															3,474,655
1893	2,554,450			754,000	106,000	*251,300*										155															3,769,105
1894	7,776,400			1,080,240	2,983,950	*266,000*										9,350															12,115,940
1895	3,435,000			248,500	3,803,000	*197,000*	5,000	*814*	*65,000*							20,675	*1,450*													Barrels.	7,775,939
1896	15,233,183		*250*	434,000	3,668,650	30	2,000	*1,697*	*500*	*105,000*						1,571	541	27	454	116	253		*89*				*4*			*25*	19,498,042
1897	17,268,000				3,783,000			14,109	98,000	160						16,782	955				2,000		*871*				*325*	*162*			21,181,964
1898	51,458,388		700	667,000	3,417,900	*85,000*		260,000	7,000	6,000						8,330													*120*		35,912,318
Totals	108,178,171	305	96,050	7,490,540	20,923,500	1,510,030	7,000	276,120	170,300	111,160	834,000	1,640,500	450	61,256	769	57,952	2,946	27	454	116	2,253	16	717	4,022	93,000	529	162	120	25		141,462,152

*Italics show fish and eggs that were brought from without the State.

A REPORT ON THE PLANTING OF QUINNAT SALMON FRY IN THE SHORT COAST STREAMS OF MARIN COUNTY, CALIFORNIA,

WITH RESULTS OF OBSERVATIONS MADE UPON THEIR MOVEMENTS, FOOD, RATE OF GROWTH, ENEMIES, ETC.

By N. B. Schofield, of California Fish Commission.

DESCRIPTION OF PLATES. The three accompanying plates are to illustrate the rate of growth of Quinnat salmon fry from the streams of Marin County, California.

In Plate I are four outline figures of the fry at progressive ages. Fig. 1 represents the young salmon with yolk sac just absorbed; Fig. 2, 25 days after absorption of yolk sac; Fig. 3, 46 days after absorption of yolk sac; Fig. 4, 62 days after absorption of yolk sac. Figures 1, 2, 3, and 4 are from specimens 1.35, 1.7, 2.51, and 2.98 inches, respectively.

Plate II represents a young Quinnat salmon taken in brackish water, 107 days after absorption of yolk sac—showing loss of markings below lateral line and the faded out parr marks, caused by the brackish water. Drawn from an average specimen 3.2 inches long. This drawing should be compared with Plate III, which figures a young salmon from fresh water.

Plate III shows a young Quinnat salmon taken in fresh water 162 days after absorption of yolk sac. Drawn from an average specimen 3.55 inches long.

The planting of Quinnat salmon fry in the short coast streams of Marin County was primarily an experiment. The Quinnat salmon has never been known to spawn in these streams, probably due to their proximity to the Sacramento River, which is the popular spawning ground for the salmon of this region. (North of the Russian River, the Quinnat spawns in the small streams as well as in the larger rivers of the coast.)

Paper Mill Creek and its tributaries are exceptionally rich in aquatic insect life, affording an abundance of food for the fry; and the absence of predaceous fishes, excepting the trout and blob, make them apparently better streams for the rearing of young salmon than the Sacramento. It was thought that if the fry could thrive in these streams and pass successfully into salt water, it would be of advantage to utilize coast hatcheries and plant in the smaller streams where the young salmon would not be subjected to their enemies like they are during the long journey from the upper Sacramento to the sea.

In December, 1896, 855,000 eyed Quinnat salmon eggs were shipped from the Battle Creek hatchery to the Bear Valley hatchery in Marin County, California. Here they were hatched early in February, 1897, and after the yolk sacs were absorbed, which was about thirty days

later, they were fed for a few days on curds of milk, and then, in the second week of March, were turned into Paper Mill Creek and its tributaries—Nicasio, Olema, and Hatchery creeks. The fry were strong and healthy, and as the streams were near the hatchery, and the fish were in no case over two hours in transportation, they were turned into the streams in the best of condition.

The young salmon were watched day after day and systematic observations made upon their movements, habits, etc. The work was first begun by the United States Fish Commission, and carried on until the middle of May. After a break here of three weeks, the California State Commission carried it on to completion.

The thing to be feared in this experiment was that the streams would prove too short and that the young salmon would arrive at salt water before they were ready to conform to the kind of life they would have to lead there.

The observations carried on in connection with the fate of these young salmon fully demonstrate the success of the experiment and prove that the fry can be as safely planted in these streams as in the Sacramento. They grew more rapidly than the same fry in the Sacramento, had fewer enemies, and passed successfully into salt water and thrived there.

By far the most interesting part of the experiment was the knowledge gained as to the habits, enemies, and growth of the fry after being turned loose. The streams being free from any young salmon but those planted from the hatchery, an excellent opportunity to observe the rate of growth was afforded. Any knowledge in this line is of great economic importance, as it enables us to more intelligently choose the right time and place to plant the fry, and proves that they do not require two or even three years to reach salt water.

DESCRIPTION OF STREAMS.

Paper Mill Creek, the largest stream in Marin County, rises in the high land just north of Golden Gate, and runs northwest for about twenty-five miles, where it empties into Tomales Bay after passing through a three-mile stretch of tide water. The bay continues a very narrow stretch of water in the same northwesterly direction for thirty miles before the open sea is reached. Paper Mill Creek is formed by the junction of the San Geronimo and Lagunitas, each of which is quite small, the water cold and swift, running over a rough rocky bottom, and everywhere overhung with trees and bushes. After uniting to form the main stream, the water frequently runs over quiet stretches of gravelly bottom, but for the most part the bed is rough and rocky and there are many cascades and deep rocky pools. The stream for nearly its entire length is well shaded with overhanging trees. The width of the stream in its normal state is about fifty feet, and its depth averages about two



FIG. 1.

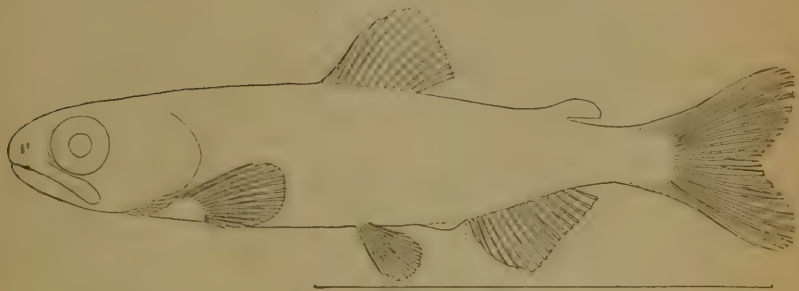


FIG. 2.

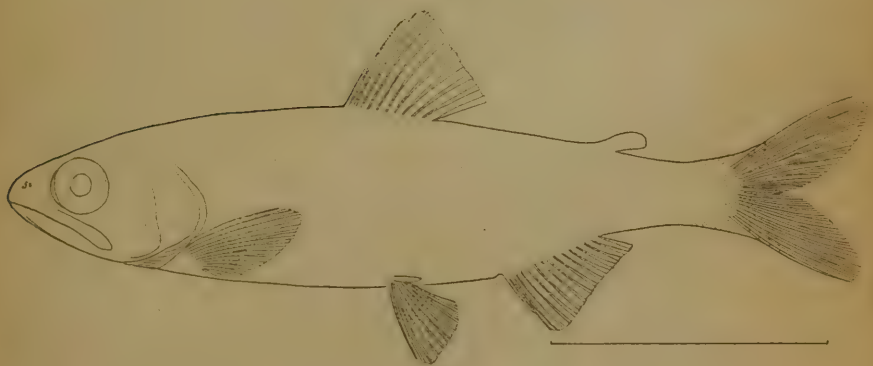


FIG. 3.

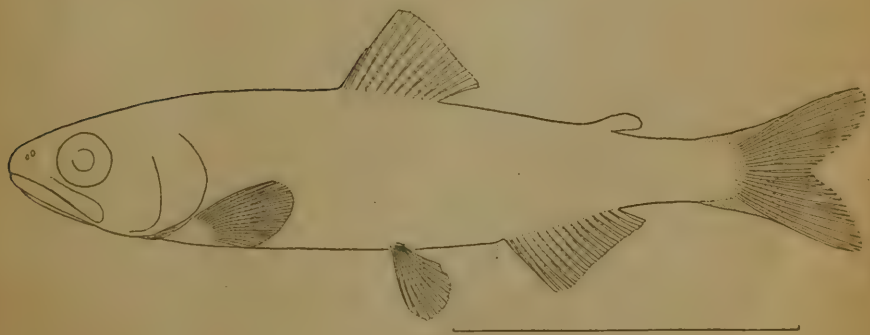


FIG. 4.

PLATE I—SALMON FRY.



PLATE II.—SALMON FRY.



PLATE III—SALMON FRY.

feet, but its size is increased enormously after each heavy rain. The water in the upper end of Paper Mill Creek during the six months after planting the fry had an average maximum temperature of 64°, while at the lower end in tide water the average was 71°.

Nicasio Creek rises to the east of Paper Mill Creek, and flows into it about five miles above tide water. Nicasio Creek is very much smaller than the Paper Mill, being only about twenty feet wide, with an average depth of six inches. Throughout its length it flows over flat, gravelly beds, with few trees or bushes to shade the water. The sun has full sweep at it and heats the water each day during the summer to a temperature of 75° or 80°.

Olema and Hatchery creeks rise to the west of the main Paper Mill, and flow almost parallel to it, emptying into it near together about one mile below upper tide-water mark. Olema Creek is about the size of Nicasio, but carries more water during the dry season. The water, too, is much cooler, and the upper stream has more of the character of the upper Paper Mill. The banks are thickly grown with brush and trees. The last two miles of the creek runs through low swampy land, with its banks most of the way heavily lined with willows. The average maximum temperature for lower Olema was 63°, and the upper stream averaged but one degree colder.

Hatchery Creek is very much smaller than Olema Creek, and is not nearly so long. At first fed by springs and running through cool, shady woods, the water is quite cold, but on gaining the open valley and running through two miles of marshy lowlands, with but little shade, it becomes, on reaching Paper Mill Creek, even warmer than the water in Olema Creek. The average maximum temperature of the upper Hatchery Creek was 54°, while at the lower end the average was 64°.

The species of fish found in these streams are limited to four. The most important is the steelhead (*Salmo gairdneri*), which runs in from salt water each winter and spawns in the streams, keeping them well stocked with young trout. About the most abundant fish is the "chub" (*Rutilus symmetricus*). The "stickle-back" (*Gasterosteus cataphractus*) and "blob" (*Cottus gulosas*) are fairly abundant. Occasionally the dog salmon (*Oncorhynchus keta*) enters these streams and spawns.

Tomales Bay, nowhere deep, grows very shallow at its upper end, where it receives Paper Mill Creek. No bar ever forms across the mouth of the creek, as is the case in most of the small coast streams, but is always open for fish to run either in or out. Temperature of Tomales Bay at its upper end averaged 70°:

THE PLANTING OF THE FRY.

The young salmon at the time they were turned loose had an average length of 1.35 inches. On being liberated from the cans they scattered in all directions, the swift current at first carrying them some distance down stream. But they soon recovered, and turned their heads against the strong current, and found their way immediately to the quieter waters along the shallow edges, in eddies, quiet pools, or among the stones at the bottom of the stream. Some few would even move a few yards up stream, and demonstrated that they were able to hold their own even against a very swift current. On gaining quieter waters they rested themselves, moving only enough to keep from drifting down stream. As soon as they gained a position of this kind they immediately began feeding on any particles of food that floated within their sight; often snapping viciously at flies half as large as themselves. Each individual acts for himself. They do not run in schools, and no more than two or three are found together unless the nature of the stream compels it. In eddies and pools they are thrown together, but in a long, shallow, quiet stretch of water they scatter out—each one taking a position in the eddy of a small stone, or other object, where they have to barely move a fin to keep their position, while the water above them is moving swiftly. Lying in such places they watch for insects or any particles of food that may be floating past. They feed principally upon objects floating on the surface, but often they are seen to strike at objects beneath. After striking at an object they almost invariably return to their old position. Frequently one would be seen to move a few yards down stream and take up another similar position. The young salmon undoubtedly move down stream in this manner: moving down individually and by dropping a few feet at a time.

After two weeks in the stream but very few of them were to be found in the shallow water; nearly all had moved into the deeper holes. Here they would be nearer the center of the current, where there is more floating food and where they could also hide, for by this time they are very shy, and dart into the deeper water or under a rock at one's approach. The young steelheads which hatched out shortly after this time were not nearly so shy at the same age.

Four weeks after planting, practically all had moved into the deeper holes, and as long as they remained in the streams they occupied these places. In the deep water of the lower Paper Mill, where the water was four and five feet deep, they would hang stationary in the center of the current a foot or two below the surface, darting now and then at objects on the surface.

MOVEMENT DOWN STREAM.

As before stated, the only noticeable movement down stream was the occasional movement of individuals dropping from one resting place to another. During the first three weeks after planting, the water in the streams was high and muddy, and, except in Hatchery Creek, good observations could not be made. It was only a matter of a couple of days until most of the salmon had dropped down out of the upper Hatchery Creek. If there was a similar movement of the young salmon in the other streams during the first few days I do not know; but when the first seining was done, a month after planting, the fry were found more abundant in tide water than in the upper streams where they were liberated. There can be no doubt that there was a decided movement down stream during the first month, which probably began immediately after planting.

Forty-five days after planting, the fry were found in considerable numbers in brackish water. As this was the first time seining was done in brackish water, we do not know how much sooner they reached this point. We subsequently learned that the fishermen near Marshall, fifteen miles down the bay, caught the young salmon in considerable numbers as early as the last of April, or fifty days after they were liberated. At this time for about a week they caught fifteen or twenty at a haul in their 300-foot nets. After a week they caught only two or three in a haul, and then, as the fish grew scarcer, they caught only two or three in a day's seining. After the middle of June, three months after planting, they caught no more.

It is unfortunate that we have to rely solely on the fishermen for information as to when the salmon reached salt water. Information obtained in this way cannot usually be relied upon, but the young salmon was a new fish in the bay and the fishermen could not help noticing it. The stories of the different fishermen agree so well that in this case it is safe to rely on them.

The first seining in the bay was on April 29th, fifty days after planting, on which day we caught one of the young salmon. This was at a place about two miles from the mouth of Paper Mill Creek. The seining was done with a thirty-foot net, and although we seined almost daily in the bay after this and with a fifty-foot net, not another salmon was caught.

The young salmon were found in brackish water, near the mouth of Paper Mill Creek, up to the 11th of May, two months from the time of planting. This date probably marks the end of the run. Those that remained, continued to go out a few at a time, until by the sixth month but very few were left in the streams. After the sixth month no seining was done until the eleventh month, which was after the winter rains. After the most thorough seining at this time only three of the fry could be found, showing that practically all had run out before the end of the year.

By the middle of the second month, when the water had become clear enough to watch the young salmon from the bank, it was found that they retained their positions in the current for hours without moving down stream even for a few feet. In one instance an albino (one without color) kept one position for three days, after which it could not be found either above or below its old position. These facts all tend to show that there was a decided movement of the salmon down stream during the first month, and after that time they moved out much slower. It probably took the rains of the next winter to drive them all out.

We tried another experiment. By stretching a net across a narrow place near the mouth of Paper Mill Creek as the tide was coming in, it was demonstrated that the salmon play back and forth with the tide before passing into salt water, as they repeatedly ran into the net ahead of the tide when it was fixed in this way.

MOVEMENT UP STREAM.

In all of the streams except Hatchery Creek the fry were planted where they could easily move up stream two or three miles if they so desired. The streams were carefully seined above the planting places to determine to what extent they moved up stream. In Nicasio Creek only a very few had moved up, and they had gone but a fourth of a mile above where they were liberated. We found a few in Olema Creek a fourth of a mile above where they were planted. In Paper Mill Creek I found that none had moved up stream. All of the side streams were seined to see if the fry had entered any of them, but it was found that they had entered only one—a very small stream fed by springs flowing into lower Hatchery Creek. The water in this small stream was much colder than the water in the creek and was grown full of water cress. Nearly a hundred of the fry had entered this and were found as far up as they could get. Some had even found their way through a perfect mat of grass and drifted rubbish. The current in this stream was very slow, and it entered the creek at such an angle that it was a sort of trap, and I have no doubt the fry got in there in trying to get down stream. Although some of the fry do work up stream for a short distance, they are the exception. Why they move down stream we do not know, and we will have to credit it to instinct. A young steelhead or other trout when frightened prefers to dart up stream rather than down, and if one wades down stream and attempts to drive them before him he will find that they will not drive, but will dart between his legs or around him in their frantic efforts to get up stream. Knowing this trait of the fish, in seining for them the net is always hauled down stream. With the salmon fry it is different—when frightened they will run even more readily down than up stream. By walking along a small stream they can be driven either up or down. In seining for them they are caught as readily by seining against the current as with it.

GROWTH. The most important part of the work was finding the rate of growth of the young salmon while remaining in the stream. This was determined by capturing series of the fry at intervals and making careful measurements of their length.

The young salmon were put in the stream on or about the 10th of March, thirty days after hatching, at which time their yolk sacs were absorbed. At this time their average length was 1.35 inches, and the rate of growth is figured from this time. Although the rate of growth could have been determined more accurately had larger series of fry been saved, it is accurate enough to demonstrate a remarkable growth and to enable us to make comparisons between the different streams and different parts of the same stream. It also gives us some idea what to expect in larger rivers.

The most rapid growth was during the first month, at the end of which time they had, in the lower stream, reached an average length of 2.28 inches; a gain for the month of .93 of an inch. A few individuals reached a length of 2.40 inches.

Through the second month the growth was not quite so great, and during the third and fourth months correspondingly less. At the end of the second month the salmon in the lower end of the creeks averaged 2.98 inches in length, and a few had reached a length of 3.1 inches.

During these first two months the fish in the lower streams averaged considerably larger than those above. At the end of the first month those above averaged 1.71 inches, against 2.28 inches for those below. At the end of the second month those above averaged 2.75 inches against 2.98 below.

After two months there was no marked difference between the salmon in the lower streams and those above, except in Hatchery Creek, where those above remained very small.

At the end of four months the average length of the salmon was 3.35 inches. The rate of growth during the four months, taken from an average of all the salmon retained, was .52 of an inch per month. After four months this rate of growth fell off very considerably, and at the end of the fifth month they had reached an average length of only 3.46 inches. After the middle of the sixth month no more seining was done in the streams until the following February, or eleventh month, when one salmon was found in Olema Creek measuring 3.64 inches. On April 14th, thirteen months after planting, another was found in Olema Creek 4.45 inches long. One other was found in Olema Creek, of which I have no measurements.

Nearly all the salmon had run out of the streams by the end of the fourth month, and those remaining after this time were evidently stunted individuals, as is shown by their very slow growth. An instance proving this is shown in the following: In March, 5,000 of the

fry were put in Bear Valley Creek, which is dammed at its lowest end and fixed with a screen so that the fish cannot get out. Here, eleven months after planting, two salmon were caught, each measuring 5.5 inches. At the same place, fifteen months after planting, two specimens were caught, one 6 inches, the other 7.5 inches long. This remarkable growth in a stream where they were confined is another point that leads to the belief that the salmon which preferred to remain, after four months, in the streams where they were not confined were individuals stunted or the physical inferiors of those running out during the first four months.

The growth of the salmon was the same in Paper Mill, Nicasio, and Olema creeks, but in Hatchery Creek the growth was not so rapid. The salmon in the lower end of the creek grew rapidly enough, but those above grew very slowly, gaining on an average the first three months only .15 of an inch per month. At the end of the fourth month they had all descended to the lower stream. The reason of this slow growth in the upper stream was due to the scarcity of food. Although the temperature of the water there is much lower than it is below or in the other streams, we cannot, knowing what we do of their growth in other cold streams, attribute their slow growth to the temperature of the water.

Owing to this difference in growth in the same stream, the variation in the size of the individuals is great. Out of thirteen specimens taken from lower Hatchery Creek at the end of three and one-half months, the largest was 3.53, the smallest 2.26 inches, a difference of a little over 1.25 inches; or, expressed in the amount gained by each since planting, the largest 2.18 inches, the smallest 0.91 of an inch. The variation in Olema Creek, where no difference was found between the upper and lower stream, after the second month was nearly as great. From seventeen specimens taken at the mouth at the end of three months the largest was 3.42, the smallest 2.58 inches.

The important points learned in connection with the rate of growth of the young salmon were: *First*, that during the first four months their growth averaged 0.52 of an inch per month; *Second*, that the few salmon remaining in the stream after four months were stunted, and grew very slowly in comparison with those confined in Bear Valley Creek.

An important fact to be noted in connection with the salmon confined in Bear Valley Creek is, that of the two salmon taken in February, 1898, both were males; one with the generative organs fully developed. It is not uncommon to find young 4 to 4½ inch male salmon remaining in the streams with the testes fully developed, but it was never before found in a salmon whose age was known. This individual found in Bear Valley Creek was 5.5 inches in length, and was just twelve months

old. It should also be noted that it was no smaller than the other male salmon taken at the same time. Evidently the development of the sexual organs did not retard its growth.

Although these young male salmon are occasionally found with the generative organs prematurely developed, no females, to the best of my knowledge, have ever shown such development. This premature development peculiar to the males, accounts for the undersized males, or "grilse," accompanying each run of salmon up the rivers, and it tends to prove that such "grilse" are not stunted individuals, but simply that they have matured at an earlier age and are younger than the salmon which they accompany.

THE AGE OF THE "GRILSE."

The following is a mere speculation in regard to the age of the above mentioned "grilse": We have already seen that one out of the two males taken in Bear Valley Creek at the age of one year was sexually mature. In the headwaters of the Sacramento we have in November found among the young salmon remaining in the streams several sexually mature males, which at that time were under ten months of age. These few examples which have come to my notice represent a very small percentage of the number that must mature within ten months or a year in the large body of salmon that leave the stream immediately after hatching. Reaching maturity they would naturally follow the next run of salmon up the river. There are two runs of salmon up the Sacramento each year; the fall run starting up the river about the end of July and reaching the spawning beds at Battle Creek in October. The eggs spawned by this run hatch in January and February. Ten months after hatching, at which time the "grilse" would have matured, would be too late for them to catch the next fall run up the river, but they could catch the next spring run, which starts up the river in April, and reaches the spawning grounds in the McCloud River in June and July, the eggs hatching in October and November. The salmon hatching from this spring run get out of the river in time for the "grilse" to catch the fall run ten months later.

If this is true the "grilse" running in the spring are about sixteen months of age on reaching the spawning beds in June. Those arriving on the spawning beds in the fall are about twelve months of age. If this actually happens, the "grilse" of the spring run should average larger than those of the fall run. The age of these "grilse" can be determined by better and more extended observations, and such knowledge would be a long step toward determining the important question of how old the full-grown salmon are when they run.

FOOD. The young salmon, from the time they first begin to feed, eat almost anything they can get, but they show a preference for insects and insect larvæ, and they prefer to capture food that is floating on the surface of the water. An examination of the contents of the stomachs of the young salmon taken from Paper Mill Creek and its tributaries, from the time they were planted to the time they reached salt water, shows that their food was almost exclusively flying insects which had dropped upon the surface of the water.

These streams abound in caddice worms of three or four species, small periwinkles, the larvæ of stone-flies, may-flies, and other insects; but they were all neglected for the flies, bees, beetles, caterpillars, etc., that fall into the stream. No caddice worms or periwinkles were found in their stomachs, and but very few of the larvæ of aquatic insects. This same thing was observed in the younger trout; and although the larger trout eat large quantities of caddice worms, the insect larvæ in the water do not furnish the amount of food to these fish that is popularly supposed.

Although these salmon live almost exclusively on insects that drop upon the water, we have found in their stomachs pieces of leaves and buds, small feathers, shells of salmon eggs, and the helpless young of their own species. (See notes on planting of salmon fry before yolk sacs were absorbed, at Sisson, November, 1897.)

In the salmon taken in brackish water I found they had been eating small salt-water crustaceans, and one three-inch salmon taken in salt water had eaten six of the young of the "silver smelt" (*Atherinops affinis*) and one small leaf-hopper of the kind that is found among the pebbles along the shore of the bay.

In almost every case the stomachs were filled to their utmost with food. Tomales Bay abounds in small crustaceans and the young of the "silver smelt," and the young salmon would have no trouble in finding an abundance of food on reaching salt water.

Scarcely any vegetable matter was found in their stomachs, and what little was found no doubt was taken by accident.

If these young salmon live almost exclusively on flying insects, the way to choose a good stream for planting would be to select one with plenty of trees, bushes, and grass along its banks, for such vegetation is a harbor for insects.

ENEMIES. The principal source of danger to young fish in a stream is from predaceous fishes, or even from older fish of their own kind. Of the four species of fish in these Marin County streams—chub (*Rutilus symmetricus*), stickle-back (*Gasterosteus cataphractus*), blob (*Cottus gulosas*), and trout (*Salmo gairdneri*)—the last two only are predaceous.

After planting the young salmon, a number of these two species were caught daily, and the contents of their stomachs carefully examined. Altogether only about twenty-five specimens of *Cottus gulosas*, of size large enough to prey upon the young salmon, were caught. Out of these twenty-five, not one had eaten a fish of any kind. Thirty or forty specimens of *Salmo gairdneri* were examined daily for three weeks after planting, and in not one instance had a salmon been eaten. The only fish eaten by them was *Rutilus symmetricus*, and no more than ten of these were found in about seven hundred examined.

The other enemies to young fish observed were water snakes, kingfishers, herons, and divers. Although none of these were killed to find out what they were eating, it is safe to say that the loss of young salmon due to them was slight.

PLANTING OF QUINNAT SALMON FRY IN MARIN COUNTY STREAMS IN 1898.

In February, 1898, 2,000,000 Quinnat salmon fry were planted in Paper Mill Creek and its tributaries by the United States Fish Commission. On account of limited hatchery space and lack of funds, the fry were all planted before the yolk sacs were absorbed. The fry hatched at the same time as those liberated in these streams last year, but they were planted about three weeks earlier. The height of the water in the streams at the time of planting and during the next month was lower in 1898 than in 1897. Notwithstanding this, the salmon ran out earlier than the year before. In April there were not as many salmon left in the streams as in June of the year before. In June no salmon whatever could be found in Paper Mill Creek. Only a very few were found in Olema Creek, and they were not much more plentiful in Hatchery Creek—the same condition that existed two months later in 1897. The only reason I can give for this difference in time of running out is that they were planted at different ages. Apparently, planting before the yolk sacs are absorbed causes them to run out earlier. This brings up an important question: Does the holding of the fry until after the yolk sacs are absorbed keep them from running out as soon as they would under natural conditions?

From a series of specimens taken in April and June, it was found that their average growth was .52 of an inch per month. It should be noticed that this rate of growth during the first four months is almost exactly the same as that found for the same period in 1897—differing only .05 of an inch.

NOTES ON THE MOVEMENTS OF THE YOUNG OF THE STEELHEAD TROUT (*Salmo gairdneri*, Richardson) IN MARIN COUNTY STREAMS.

By N. B. Schofield, of California Fish Commission.

The steelheads ascend Paper Mill Creek and its tributaries regularly each year for the purpose of spawning. Late in October and early in November they appear in tide water, where they remain until the first good rains. They then ascend the creeks, and spawn on the gravel bars in December and January, reaching their height in early January.

After spawning the steelheads drop back down the stream, and remain for some time in the holes in tide water before running into salt water. Unlike the salmon, they do not die after spawning, but drop back into salt water and return to spawn again. Steelheads from the lower Paper Mill Creek examined in April after spawning showed the ovaries with the eggs forming, which would probably have matured by the next winter run.

The first young steelheads appear in shallow water along the edges of the stream after absorbing their yolk sacs late in March, but they do not appear in any great number until late in April. In 1897 they began to show themselves in considerable numbers by the 15th of April, and by the 25th the edges of the stream in places were fairly black with them. At this time they are not very shy and are not frightened when one comes near them, unless his shadow chances to fall on them. By being cautious one can with his hand scoop them out onto the bank. This cannot be done with the young salmon of the same age, as they are much more shy. These young steelheads as they lie in the shallow water kept their heads against the current, and were entirely absorbed with the task of catching something to eat—feeding in the same way as has been described in the case of the young Quinnat salmon. In a very few days they left the shallow water and moved more into the center of the stream, where there is more floating particles of food for them to catch.

By the middle of May nearly all the small steelheads had moved from the shallow, quiet water along the edges into the swift water near the center of the stream or into the deeper holes.

On the 12th of June the average length of the young steelheads was taken from thirty-three fish measured, and was found to be 2.6 inches. The age of these fish we can estimate very accurately to be fifty days, counting from the time their yolk sacs were absorbed. At the time of

such absorption their length would average less than 1.15 inches. Thus, in fifty days their actual gain in length was 1.45 inches, or considerably over three-fourths of an inch per month. This is even a more remarkable growth than that found in the young Quinnat salmon.

To get at some idea of their abundance I will copy from my notes of June 16, 1897, on seining with a thirty-foot net in upper Olema Creek: "The first haul was through a hole thirty feet wide, fifty feet long, and three feet deep in the deepest place; caught 61 young steelheads, 27 large stickle-backs, and 3 blobs. The second haul was over a riffle with pebbly bottom; hauling about thirty feet we caught 25 steelheads and 10 stickle-backs. The third haul was made through a small hole ten feet across and two feet deep, with roots of an old stump at the edge, under which they could hide. Here we caught 165 steelheads, 7 stickle-backs, and 10 blobs. The fourth haul was through a hole ten feet wide, fifty feet long, and three feet deep in deepest place; caught 152 steelheads. The fifth haul caught 100 steelheads; the sixth, 75; the seventh, 28; the eighth, 58; and the ninth, 127 steelheads. In one-fourth mile seined we caught 578 steelheads, all under three inches in length. I have estimated that we took two thirds of the steelheads in that distance. There are twelve miles of the stream in which they are just as plentiful, which would make about 37,000 young steelheads for the stream. The number in Paper Mill Creek would be from five to seven times this amount, and the number in Nicasio and Hatchery creeks would, for each, be about one fourth the number in the Olema."

"Very few, if any, of the young steelheads have moved down stream, and nearly every one to be found in Olema Creek now has been hatched this year."

A thorough seining of the streams at that time showed that there was scarcely a steelhead over three inches in length. During the summer, when the water is low and warm, the steelheads, except those hatched the same spring, nearly all run into salt water. During June, while seining for young salmon in brackish water near the mouth of Paper Mill Creek, young steelheads were caught in considerable numbers, ranging from 5½ to 6½ inches in length. In all the red colors were not lost and the dark bars on the sides were bright and distinct, showing that they had just come from the upper stream—for the bars on the sides, and especially the red markings, are quickly lost in brackish or salt water.

After the first good rain in the fall, when the streams begin to rise, the young steelheads from 6 to 10 inches long appear in large numbers in tide water, with their sides bright and silvery and the dark bar marks almost lost. They gradually work up the streams and soon their color gets darker and the dark markings more distinct. After each heavy rain there is a fresh run of these steelheads, and as the water subsides again they drop back into salt water.

There is the best of evidence that these fish do not enter the streams for the purpose of spawning. In all the seining done from January to September, not one steelhead under three pounds was found sexually mature, and none were found that showed any sign of becoming so. By questioning people resident here and familiar with the fish in these streams I find that small steelheads under two pounds are very rarely if ever found with spawn.

Rainbow trout (*Salmo irideus*) are nearly every year liberated in Paper Mill Creek, but if they live they have gone back to the habit of running back to salt water and cannot, in habits, general appearance, or structure, be distinguished from the steelhead.

Although seining was done in tide water from the time young steelheads begin to hatch until the 14th of June, none of them were caught. Up to this time they had not begun to run out, but they did run out before the next January. They probably run out when the stream is at its lowest, late in August and early in September.

NOTES ON AN INVESTIGATION OF THE MOVEMENT AND RATE OF GROWTH OF THE QUINNAT SALMON FRY IN THE SACRAMENTO RIVER.

By N. B. Schofield, of California Fish Commission.

Aided by the knowledge gained in the study of the habits, movements, and rate of growth of the young salmon in Marin County, we were better enabled to carry on the more difficult work of finding out the movements and rate of growth of the salmon fry in the Sacramento River.

The work was begun in the headwaters of the Sacramento in the neighborhood of Sisson in August, 1897, and has been continued at intervals to the present time. During the present spring the United States Fish Commission has taken up the same work in the Sacramento, and in the following report I have made free use of some of the results of their work, especially of their work in the brackish and salt water of Suisun and San Pablo bays.

To make clear what is to follow I will explain that although a few salmon may spawn in some of the tributaries of the Sacramento in almost any month of the year, the vast majority of them spawn at two separate and distinct times. Eggs deposited by the spring run hatch in October, and the eggs from the fall run hatch the following February. After hatching it is another month before they begin to swim around and feed.

The adult Quinnat salmon, in its journey up the Sacramento for the purpose of spawning, never reaches Sulloway Creek, and it very rarely reaches a point as far up the Sacramento as the mouth of the Sulloway. The young Quinnat salmon found in the Sulloway and this part of the Sacramento are from the State hatchery at Sisson, and, knowing the age of the fry liberated, it is possible to estimate very accurately their rate of growth.

On August 28, 1897, I seined Sulloway Creek, and found the salmon fry quite plentiful. To better illustrate their number, in one haul, through a hole three feet deep, ten feet wide, and fifteen feet long, I caught twenty-seven young salmon. In other parts of the creek they were just as plentiful. None were found above the point where they had been liberated. These fry had been planted in February, and at the time their yolk sacs were absorbed—about March 10th—their average length was 1.35 inches. On August 28th, five months and twenty

days later, they had grown to an average length of 3.26 inches, or an actual gain in length of 1.91 inches; an average gain per month of .33 inch. The specimens from which this average was taken contained the smallest and largest salmon found, or 2.83 and 4.08 inches, between which two lengths there was a perfect intergradation.

On November 2, 1897, a little over two months later, Sulloway Creek was again seined, and only about one half as many young salmon were found, and from a representative series ranging from 3.30 to 4.18 inches in length, the average was found to be 3.5 inches, or a gain of .24 of an inch in the two months.

Early in November, salmon fry hatched from eggs taken at Baird, on the McCloud River, were planted in Sulloway Creek, and by November 22d they had absorbed their yolk sacs. In the February following, salmon fry hatched from eggs taken at Battle Creek were again planted. These absorbed their yolk sacs about March 10th. No seining was done between these two plants, and none after, until the 15th of May, 1898. On this date young salmon were caught, and, after measuring a larger series, it was found that they were of three well-developed sizes. Those making up the smallest size exceeded all of the others 8 to 1, and they had grown from a length of 1.35 inches on March 10th, to 2.18 inches, or a gain of .83 of an inch, a rate of .38 of an inch per month. The smallest salmon found belonging to this group was 1.64 inches, the largest 2.8 inches. The next size ranged from 3.58 to 3.9 inches, and averaged 3.73 inches. These had remained in the stream since the November preceding, and there were very few of them as compared with the smaller size. They had been in the stream nearly six months, and showed an average gain of .39 of an inch per month. Only two specimens were found larger than this size, and they each measured 4.6 inches. These had undoubtedly remained in the stream at least since March of the year before.

Although it had been only a little over two months since several millions of salmon fry were planted in this small stream, there were—compared with the immense number planted—scarcely any left. These observations seem to warrant us in drawing the following conclusions: That the great bulk of the fry planted in February and March leave the stream, on their way down the river to salt water, within two months; a few of them remain until the rains of the following winter, and a few individuals may even remain through the winter up to the beginning of the rains the next fall. Of the fry planted in November, nearly all leave the stream during the winter, and it is probable that they do the same as the others—leave the streams within two months. I should add that the observations of the young salmon in Marin County, which are to be found in a separate report, and the subsequent observations carried on in the Sacramento, all demonstrate the correctness of these conclusions.

On August 29, 1897, I seined in the Sacramento near Sisson, and found salmon ranging from 2.63 to 4.37 inches in length, with an average length of 3.25 inches. On November 3, 1897, I seined again in the same place, and found the salmon ranging from 3.25 to 4.50 inches, with an average length of 3.92 inches. They had gained .67 of an inch in the two months since the stream was seined before; or, for the eight months which they had remained in the stream, an average gain of .32 of an inch per month. In the two months their number had diminished about one-half, which was the same falling off as found in Sulloway Creek.

On November 6, 1897, I seined the upper Sacramento at Sims, and found the average length of the salmon there to be 4 inches, although they ran from 3.5 to 4.5 inches.

On May 17th of the following year, a little over six months later, the stream was again seined at the same place. The average length of the young salmon at this time was 2.67 inches, although they ran from 1.52 to 3.76 inches. In this series the fry were hatched from eggs spawned by two different runs, which accounts for the great difference between the largest and the smallest of the series. Those in the upper end of the series, and which average about 3.5 inches, had absorbed their yolk sacs and begun to feed six months before, while the lower end of the series represents those which had begun to feed only two months before. If two hatches of salmon as young as these and with such a difference between their ages had been found in a small tributary of the Sacramento we could expect to easily separate the two sizes, but in the main stream, as at Sims, where the young salmon are from several different tributaries, a large variation in the size of the individuals occurs and it is not strange that the two sizes cannot be readily distinguished. Out of a very great number of small salmon caught here the largest was scarcely larger than the smallest taken at the same place six months before, which is the best evidence that none of those in the stream six months before remained through the high waters of winter. If they had remained until this time they would have been fifteen months old.

In Hazel Creek, a tributary of the Sacramento near Sims, I found, on November 6, 1897, two sizes of young salmon. The smaller size varied from 2.65 to 2.95 inches, with an average length of 2.87 inches; the larger size ran from 3.93 to 4.42 inches, with an average of 4.19 inches. The larger size greatly outnumbered those of the smaller size, and agreed well with the size of the salmon in the Sacramento at Sisson and at Sims. Of the smaller size only four were taken. Assuming that they had grown at the same rate as the others, they must have hatched from the egg early in August, and allowing three months for hatching, they were spawned early in May. There is nothing remarkable in the fact that salmon spawned here in few numbers at that time of year. The first salmon of the spring run have been observed passing

Baird on the McCloud in April, and they have been observed spawning in considerable numbers in the river above Baird early in May. Although the spring run does not reach its height at Baird until late in July, a good many salmon arrive earlier, and move farther up the river. The number of these irregular salmon is so small in comparison with those of the regular spring and fall runs that the fry resulting should not materially affect the two sizes of fry hatched by the spring and fall runs.

On May 17th of the following year, after the winter rains, Hazel Creek was again seined, and the largest salmon found was 2.82 inches, the smallest 1.53 inches, with an average length of 1.79 inches. It will be seen by comparing these figures with those of fish taken six months before that none of the salmon of the two sizes then found remained in the stream, and that the smaller size found on May 17th were hatched since that time from eggs deposited by the salmon of the fall run.

In the first week of September, 1897, I seined the lower end of Battle Creek thoroughly, and found young salmon in considerable numbers running from 3.08 to 4.58 inches, with an average length of 3.58 inches. The next time this part of the stream was seined, on December 5th, it was found that none of the salmon found three months before had remained in the stream, but that their places were taken by a new lot, averaging 2.39 inches. These salmon were spawned in the upper creek by the spring run, had absorbed their yolk sacs only two months before, and were already dropping down the river on their way to salt water.

At the United States and State hatchery on Battle Creek practically all of the fall run of salmon entering the stream were caught and their eggs taken. Five million of the fry hatched from these eggs were liberated in Battle Creek in February, 1898. They were liberated before they had begun to feed, but it was estimated that their yolk sacs would have been absorbed by the 10th or 15th of March. Mr. Cloud Rutter, of the United States Fish Commission, seined the lower Battle Creek on April 30th and found large numbers of salmon ranging from 1.40 to 3.45 inches, with an average length of 2.13 inches. This shows a gain of .45 of an inch per month in length. Although a large number of salmon were found in Battle Creek, they were not found nearly as abundant as they should have been had all the immense number liberated remained in the stream. A very large part of them had unquestionably drifted into and down the main river, and this within a month and a half of the time they began to swim about and feed after absorbing their yolk sacs.

On April 28th Mr. Rutter found young salmon in the main river at Red Bluff more abundant than he found them in Battle Creek two days later. These salmon ran from 1.51 to 3.09 inches, and had an average length of 2.16 inches. As they were found below the mouth of

Battle Creek, and their size coincided within .06 of an inch of those in Battle Creek, and in view of the fact that a larger number of the salmon in Battle Creek had moved out, we are justified in saying that they came out of Battle Creek.

On May 4th he found salmon abundant at Redding, ranging from 1.8 to 3.65 inches and averaging 2.38 inches. On May 5th at Tehama he found salmon ranging from 2.14 to 2.91 inches and averaging 2.53 inches.

Beginning with the second week in May the United States Commission carried their investigations into the lower Sacramento River and into Suisun and San Pablo bays. In the second week of May young salmon were found at Collinsville and at Benicia, but I have no record of their number, and of their size I only know that it corresponded with those found in the same place later in the same month.

On May 17th, six were found at Pinole, San Pablo Bay, ranging from 2.4 to 3 inches and with an average length of 2.6 inches. On the same day one was caught at Point Richmond, San Pablo Bay, 3.31 inches long. On May 18th, one was taken at Rodeo, San Pablo Bay, 2.4 inches long. On the 20th, 23d, and 24th, five were taken at Benicia, in the strait between Suisun and San Pablo bays, running from 2.06 to 2.56 and averaging 2.29 inches in length. On the 30th, three were taken at Rio Vista, in the lower Sacramento, running from 2.03 to 2.18 inches and averaging 2.08 inches. On June 10th, two were taken at Marshall's Landing, near Antioch, the largest being 3.3 and the smallest 2.12 inches in length.

If this small number of salmon taken in salt water represents, as it unquestionably does, the first big movement of young salmon out of the river, it at first appears that more of them should have been found, but when we consider the vast expanse of territory the lower Sacramento covers with its many channels and bayous, to say nothing of San Pablo and Suisun bays, it is not so strange that so few were found—in fact, the strange part of it is that so many were found—and we can realize the vast number that must have distributed themselves in these waters.

During the last two weeks of May I accompanied Mr. Rutter on a trip down the Sacramento in a row boat. Our object was to stop and seine the river at every available place, and learn the abundance, size, and movements of the young salmon. At Redding, on May 18th, we found the young salmon abundant, with an average length of 2.43 inches. At this place, two weeks before, their average length was 2.38 inches. At Red Bluff, on the 20th, we found no salmon whatever, although two weeks before they were very numerous. Just below Red Bluff we found a good many, their average length being 2.16 inches. From here to a point opposite Chico we found the salmon not so abundant. In a haul with our fifty-foot fine-meshed net we usually caught from twenty to

thirty. Below Chico this number fell off, and we caught only four or five in a haul. At a point two miles below Knights Landing the last salmon was caught, although we seined thoroughly between this point and Sacramento.

Below Red Bluff the salmon were very uniform in size, averaging 2.4 inches. It should be remembered that while we were making this trip small salmon of this same size were being caught in salt water. They were all hatched from the fall run of salmon, and it had been but a little over two months since they were old enough to feed. Their rate of growth after the absorption of the yolk sac was almost .5 of an inch per month.

Early in July Mr. Rutter again made the trip down the Sacramento, but was unable to find any salmon whatever below Battle Creek. The run of small salmon out of the river had ceased.

The conclusions to be drawn from these observations are: That immediately or very shortly after the salmon are old enough to feed and begin to swim about they begin to drift down the river, and within two months of this time they reach salt water. By the end of the fourth month the run is over, and those remaining in the headwaters of the river stay until the high waters of the following winter. The number of these thus remaining is small compared with the number running out immediately.

The rate of growth of the salmon during the first two months after absorbing the yolk sac, taken from an average of all the salmon taken on the Sacramento, was .42 of an inch per month. Those remaining after two months do not grow so fast. Salmon from four to eight months old show an average gain per month of a little over .30 of an inch.

IN THE MATTER OF DUMPING SAWDUST INTO TRUCKEE RIVER.

(116 Cal. Rep. 397. See No. 209, Department One. April 3, 1897.)

THE PEOPLE, ETC., *Respondent*, vs. THE TRUCKEE LUMBER COMPANY, *Appellant*.

FISH—OWNERSHIP OF STATE—TITLE TO LANDS IMMATERIAL. The fish within the waters of the State constitute the most important constituent of that species of property commonly designated as wild game, the general right and ownership of which is in the people of the State; and to the extent that waters are the common passageway for fish, whether such waters flow over lands, the title of which is in the government of the State or the United States, or over lands entirely subject to private ownership, they are deemed for such purposes public waters, and subject to all laws of the State regulating the right of fishery.

ID.—EXTENT OF STATE'S DOMINION—NON-NAVIGABLE WATERS—RESORT AND PASSAGE OF FISH. The dominion of the State, for the purpose of protecting its sovereign rights in the fish within its waters, is not confined to navigable waters, but extends to non-navigable streams, wherein fish are habited or accustomed to resort for spawning or other purposes, and through which they have freedom of passage to and from the public fishing grounds of the State.

ID.—JUDICIAL NOTICE—NON-NAVIGABLE STREAM CONNECTING NAVIGABLE LAKES—TRUCKEE RIVER—PASSAGEWAY OF FISH. The Court will take judicial notice that the Truckee River, though a non-navigable stream, has its source in Lake Tahoe, a large navigable body of water lying partly in this State, and that it empties into Pyramid Lake, in the State of Nevada, which is also navigable; and that the river has from time immemorial afforded a natural and free passageway for the passage of fish habiting those lakes.

ID.—INJURY TO FISH—POLLUTION OF TRUCKEE RIVER—REFUSE FROM SAWMILL—PUBLIC NUISANCE—INJUNCTION—ACTION BY STATE. The pollution of the Truckee River by refuse matter which is poisonous and deleterious to the fish therein, and which is deposited from a sawmill operated on its bank, to the injury and destruction of the fish in the stream, is a public nuisance, which may be enjoined in an action brought by the Attorney-General in the name of the State.

ID.—REMEDY—PUNISHMENT BY PENAL CODE NOT EXCLUSIVE. The fact that the acts complained of are made a misdemeanor, and punishable as such, does not make them less a nuisance, nor imply that the Legislature intended to make the criminal remedy exclusive of the civil.

ID.—RELATOR—INFORMATION BY ATTORNEY-GENERAL. The Attorney-General is privileged to maintain an action to enjoin a public nuisance on his information, without the intervention of a private relator.

Appeal from an order of the Superior Court of Nevada County, refusing to vacate an injunction. John Caldwell, Judge.

The facts are stated in the opinion of the Court.

Thomas S. Ford and *C. F. McGlashan* for appellant.

Attorney-General W. F. Fitzgerald and *Deputy Attorney-General Henry E. Carter* for respondent.

VAN FLEET, J. Appeal from an order refusing to vacate an injunction.

The action is in the name of the people, on the information of the Attorney-General, to restrain the commission of an alleged nuisance, the complaint alleging in substance that defendant, a corporation, maintains and operates a sawmill and box factory on the bank of the Truckee River, at the town of Truckee, in this State, in which it cuts and manufactures lumber and boxes; that said river is a fresh-water stream, having its source in the State of California, and flowing into the State of Nevada, and is now, and for a long time prior hereto has been stocked with fish; that defendant in operating its mill and factory has heretofore, and does now, place and allow to pass into the waters of said river large quantities of refuse matter, consisting of sawdust, shavings, slabs, edgings, waste, and other deleterious substances, the effect of which has been and is to pollute said stream and the waters thereof, and render the same unfit for use, and which substances are poisonous and deleterious to the fish in said stream, and are killing, destroying, and exterminating them; all of which is alleged to be in violation of the rights of the people, and a public nuisance; that defendant threatens, and unless restrained will continue to commit said wrongful acts to plaintiff's irreparable injury.

A preliminary injunction was granted *ex parte* on the filing of the complaint, which defendant subsequently moved to vacate. The motion was made upon the complaint alone, based upon the objection that the facts alleged made no case for relief. The motion being denied, this appeal ensued.

The sole question is whether the complaint states a cause of action, and this is to be determined precisely as if the pleading were subjected to a general demurrer.

The first point made against the complaint is that the facts alleged do not constitute a public nuisance within the definition of our code. But this objection would seem to overlook the most material feature of the complaint. It is alleged that the acts of defendant have the effect of polluting and poisoning the waters of the river, and thereby killing and destroying the fish therein. Anything which is "an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or any considerable number of persons," is a public nuisance. (Pen. Code, Sec. 370; Civ. Code, Secs. 3479, 3480.) The fish within our waters constitute the most important constituent of that species of property commonly designated as wild game, the general right and ownership of which is in the people of the State (*Ex parte Maier*, 103 Cal. 476, 483; 42 Am. St. Rep. 129), as in England it was in the king; and the right and power to protect and preserve such property for the common use

and benefit is one of the recognized prerogatives of the sovereign, coming to us from the common law, and preserved and expressly provided for by the statutes of this and every other State of the Union. The complaint shows that by the repeated and continuing acts of defendant this public property right is being and will continue to be greatly interfered with and impaired; and that such acts constitute a nuisance, both under our statute and at common law, is not open to serious question. (*People* vs. *Elk River etc. Co.*, 107 Cal. 219; 48 Am. St. Rep. 121.)

But defendant urges that the facts do not show the infringement of any public right, in that the right, if any, shown to be interfered with is solely that of fishery, or the privilege to take fish; that this is a public right only so far as it pertains to navigable waters, while as to all other waters it is exclusively in the riparian proprietor; that, as the Truckee River is not a navigable stream, the destruction of the fish therein is not an injury to the public for which the people can complain, there being no allegation that the riparian proprietors thereon have been injured.

In the first place, the common right to take fish extends not alone to navigable waters, but exists as to all waters, the lands underlying which are not in private ownership—in other words, to all lakes, ponds, or streams, navigable or otherwise, upon the public lands of this State or the United States not protected by reservation; and since there is no averment that the lands along the Truckee River are held in private proprietorship, we think the presumption must be that the title remains in the Government.

But, in the next place, if this is not the presumption, the case would not be different. The dominion of the State for the purposes of protecting its sovereign rights in the fish within its waters, and their preservation for the common enjoyment of its citizens, is not confined within the narrow limits suggested by defendant's argument. It is not restricted to their protection only when found within what may in strictness be held to be navigable or otherwise public waters. It extends to all waters within the State, public or private, wherein these animals are habited or accustomed to resort for spawning or other purposes, and through which they have freedom of passage to and from the public fishing grounds of the State. To the extent that waters are the common passageway for fish, although flowing over lands entirely subject to private ownership, they are deemed for such purposes public waters, and subject to all laws of the State regulating the right of fishery. (*Cottrill* vs. *Myrick*, 12 Me. 222; *State* vs. *Franklin Falls Co.*, 49 N. H. 240, 6 Am. Rep. 513; *State* vs. *Roberts*, 59 N. H. 256, 47 Am. Rep. 199, 59 N. H. 484.)

For the purposes of the right involved in this action, then, the Truckee River, so far as it flows within this State, is a part of the waters to which the jurisdiction of the State in the protection of its fish supply

extends. This Court will take judicial cognizance of the fact that the river has its source in Lake Tahoe, a large navigable body of water lying partly in this State, and that it flows thence into the State of Nevada, and empties into Pyramid Lake, also navigable; and the Court may also take notice of a fact so common and notorious that between these two bodies of water the river affords, and has from time immemorial, a natural and free highway for the passage of the fish inhabiting these lakes. Even, therefore, if, as contended by defendant, the lands through which the stream flows are to be presumed, in the absence of contrary averment, to be owned in private proprietorship, it can make no difference as to the right here asserted. While the right of fishery upon his own land is exclusively in the riparian proprietor, this does not imply or carry the right to destroy what he does not take. He does not own the fish in the stream. His right of property attaches only to those he reduces to actual possession, and he cannot lawfully kill or obstruct the free passage of those not taken. "This right in the owner of the land must be regarded as qualified to a certain extent by the universal principle that all property is held subject to those general regulations which are necessary to the common good and general welfare, and to that extent it is subject to legislative control. It is a well-established principle that every person shall so use and enjoy his own property, however absolute and unqualified his title, that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the public. Hence, while the riparian owner has the exclusive right of fishery upon his own land, he must so exercise that right as not to injure others in the enjoyment of a similar right upon their lands upon the stream above and below." (*State* vs. *Roberts*, *supra*.)

The mere fact, then, that the interference or obstruction complained of may in fact be in a stream where the right of fishery is exclusively in private riparian owners, does not make the acts here complained of any less an invasion of the public right, nor prevent the State from protecting its general interest in the property.

The fact that acts of the character alleged are by the Penal Code made a misdemeanor, and punishable as such, does not make them less a nuisance, nor imply that the Legislature intended to make the criminal remedy exclusive of the civil.

Nor is there anything in the objection that the Attorney-General is not privileged to maintain the action upon his own information, without the intervention of a private relator. (*People* vs. *Davidson*, 30 Cal. 388; *People* vs. *Stratton*, 25 Cal. 242; *People* vs. *Gold Run, etc. Co.*, 66 Cal. 138, 56 Am. Rep. 80.)

The other objections made do not call for particular notice.

Order affirmed.

HARRISON, J., and BEATTY, C. J., concurred.

REPORT OF TRUSTEES

OF

STATE NORMAL SCHOOL,

SAN JOSE,

FOR THE

YEARS ENDING JUNE 30, 1897, AND JUNE 30, 1898.



SACRAMENTO:
A. J. JOHNSTON, : : : : : : : SUPERINTENDENT STATE PRINTING.
1899.

REPORT.

STATE NORMAL SCHOOL AT SAN JOSÉ, September, 1898.

To His Excellency JAMES H. BUDD, *Governor:*

We herewith submit to your Excellency the following report of receipts and expenditures for the support and maintenance of the State Normal School at San José, under our charge, for the forty-eighth and forty-ninth fiscal years.

In our efforts faithfully to discharge the duties of the trust confided to us, we have conscientiously labored for the highest possible state of efficiency at a mimimum of expense. We have endeavored to conduct the business of the State carefully and economically, and we feel confident that our acts will bear the test of the most careful scrutiny.

The estimates for the fifty-first and fifty-second fiscal years, made by the Trustees at a special meeting called for that purpose, after a most careful and thorough examination of the property and deliberation as to the requirements of the school, are as follows:

Salaries	$105,000 00
Supplies	10,000 00
Library, museum, and scientific apparatus	5,000 00
Painting and repairing buildings	1,500 00
Reseating Assembly Hall, purchasing two pianos, additional closets	5,000 00
Piping and plumbing building for protection against fire, and increasing water supply for sprinkling grounds	1,500 00
Grounds	6,000 00
Building for library and six additional class-rooms; furniture, equipments, and heating and ventilating apparatus for same	40,000 00
Building and equipping gymnasium	10,000 00

In submitting these estimates for your consideration, we have asked for the lowest amount possible to conduct the school, with its present enrollment, in the highest state of efficiency. The introduction of manual training and physical culture, the necessity of maintaining a model school of the kindergarten grade, and the training of kindergarten teachers, together with the introduction of modern methods of instruction and practical individual work in the laboratories, have greatly increased the expense of all schools doing professional work.

SALARIES.

The present enrollment of students in the school is 680, an enrollment larger than ever before in the history of the school, showing an increase of 58 over the enrollment at the same date last year. This increase in the number of students and the organization of a kindergarten department, as required by law, has made it necessary to employ two additional teachers, which brings the present payroll, for the fiftieth fiscal year, up to $48,000, which is $2,000 in excess of the appropriation for salaries for the present year; this excess having been saved by the most rigid economy from the amount appropriated for the forty-ninth fiscal year. In addition to the teachers already employed, to bring the school up to the highest state of efficiency there are needed a teacher for the professional department, a teacher of physical culture, an assistant in the kindergarten department, and an assistant librarian. The salaries required for these additional teachers will increase the annual payroll $4,500. To meet these demands a biennial appropriation for salaries for the fifty-first and fifty-second fiscal years of $105,000 is needed.

SUPPORT.

The estimates for supplies of the school are based upon the cost of supplies during the last four fiscal years, and upon a careful consideration of the actual needs of the school for the fifty-first and fifty-second fiscal years.

LIBRARY AND SCIENTIFIC APPARATUS.

To be able to keep abreast of the advancement that an enlightened civilization is ever producing, the student teachers must have access to the latest and best that science and skill can produce, and there should be upon the shelves of the library the best and purest thoughts that literature can give. The value and importance of a library well stocked with valuable books and periodicals, and of well-equipped laboratories for a professional school, are so apparent that they need not be emphasized.

RESEATING THE ASSEMBLY HALL, ETC.

The desks and seats now used in the Assembly Hall are made up of a variety of patterns, all of a type long since out of date. They are inconvenient and uncomfortable, and on account of their size they seriously interfere with convenient seating of the hall. There is also a constant outlay required to keep them in repair. By this proposed change the seating capacity of the hall will be increased from 650 to 1,000.

The school is now paying rent for one piano, and another is practically worn out and worthless. Two pianos are greatly needed to replace these two.

Additional closets are greatly needed, and many of those in use now should be replaced with those constructed according to sanitary laws.

PAINTING AND REPAIRING BUILDINGS.

The woodwork of the main building has not been painted since 1886, and the Annex, which is a wooden building, has not been painted since 1893. All the woodwork of the buildings and the roof of the main building and the tinwork on the Annex are greatly in need of paint. This work cannot be longer delayed if the property of the State is to be preserved.

PIPINGS AND PLUMBINGS.

All the buildings are practically without protection against fire, the plumbing for this purpose being entirely inadequate. As the buildings cannot be insured, some protection against loss by fire should be provided at once. The pipes laid in the grounds for the purpose of conveying water to the lawns for sprinkling purposes are so small that it now requires three days to do two days' work in sprinkling, thus entailing a great loss in fuel and in the time of the men employed. The cost of replacing the pipes with others of sufficient size would soon be returned to the State in the more efficient service.

GROUNDS.

The sum of $6,000 asked for the grounds is for their care and maintenance, and for keeping them in a condition which will be creditable to a State institution and acceptable to the city in which the school is located.

ADDITIONAL CLASS-ROOMS.

The rapid growth of the school, and the necessity of providing additional laboratory facilities, make the demand for a greater number of class-rooms an imperative necessity. On account of the size of the school it is with difficulty that class-room accommodations can be provided, many of the classes being overcrowded. The average enrollment at the beginning of the three years preceding the present year is 594; the enrollment at the beginning of the present year is 680, an increase of 86 students. Three class-rooms should be provided for their accommodation.

At the present time, aside from the laboratories, which are not adapted to class-room work, twenty-three teachers must do their class-room work in seventeen rooms, two of which are unsatisfactory, and one is greatly needed for the Preceptress and two for the kindergarten department.

LIBRARY.

In no department of the school is the need of increased accommodations greater than in the library. This need is not the outcome of any sudden or temporary demand, but the result of a steady growth. When

the building was first occupied, the place assigned to the library was a part only of the parlor, and but a few students visited it daily. As the demand increased and new books were added, the front parlor also was used for library purposes. This double room becoming entirely inadequate, in 1893 the present room was fitted up. Large as it then seemed, the demand for books, shelf room and seating capacity has entirely outgrown the accommodations. Seats for one hundred were thought more than enough. Now the room is frequently occupied by one hundred and fifty, or even more, and the surplus must stand or find seats on the floor. This crowded condition renders the ventilation entirely inadequate, and with the greatest care, students must either be placed in a draught or must breathe foul air.

It is unnecessary to enlarge upon the special need for pure air when the students are engaged in study. It may be asked why so large a number should be crowded into the library. The answer is, that the library by the present system of study is the reference "text-book" of the student. Not one book, but many are needed, and the study hour must be spent where the books are available. Students have free access to the shelves, and this opportunity, combined with a system of study which requires reference to the best books and periodicals of the day, is an invaluable means of education.

Aside from the demand of class-room work and essays upon assigned topics, the students have also the opportunity of spending leisure time in general reading outside of their special lines of study. The value of this as a special means of the highest culture is too apparent to need special emphasis. Besides the seating and ventilating capacity, there is an immediate need of shelf room. A room is needed that combines the advantages of a library and study hall; that is, a room provided with seats and writing accommodations for two hundred and fifty students. A room of this capacity, well lighted, warmed, and ventilated, would furnish the ideal conditions for study, quiet, comfort, and books.

GYMNASIUM.

The Trustees have long recognized the necessity of some system of physical training that would promote the health and physical development of the students, a system that would give regular exercise and at the same time would furnish proper relaxation from the mental strain incident to close application in the school-room.

It is impossible for students who have not good bodily health satisfactorily to complete the course of study prescribed. Throughout the course the greatest stress is laid upon the promotion of the health of the students, yet no adequate measures are taken to insure and preserve their health. In asking for an appropriation of $10,000 for erecting and furnishing a building, the same amount appropriated in 1889 for

the same purpose for the State Normal School at Los Angeles, the Board feel that they are asking money for educational purposes, for not only will a gymnasium be a direct benefit to the students of the school, but will indirectly be a benefit to all the schools in which they may hereafter teach. The history of educational institutions shows that money wisely expended in preserving the health of students and in promoting their physical development returns large dividends in both mental and moral power.

JAS. M. PITMAN,
J. E. DOOLITTLE,
R. E. WILHOIT,
S. T. BLACK,
A. H. RANDALL,
Board of Trustees San José State Normal School.

FINANCIAL REPORT.

FOR THE FORTY-EIGHTH FISCAL YEAR, ENDING JUNE 24, 1897.

GENERAL FUND.

Receipts.

	Amount of appropriation for support, forty-eighth fiscal year	$45,000 00
	Balance remaining from forty-seventh fiscal year	204 77
	Balance in Tuition Fund from forty-seventh fiscal year, as per last report	1,132 51
	Tuition received during forty-eighth fiscal year	2,066 50
	Amount received for duplicate diploma fees	1 50
	Amount received from sale of hay	3 00
		$48,408 28

Date of Auditing. 1896.	*Disbursements.*	
July 27	Salaries for July, 1896	$2,931 63
	Bosqui Printing and Engraving Company, diplomas	20 75
	Bolton & Strong, seven photos for catalogue	50 20
	D. V. Mahaney, reporter for Board meeting	10 00
	C. H. Ashworth, serving lunch to Board	11 00
	W. W. Thompson, bookcases for History Department	30 00
	H. W. Conkling, barley and hay	8 45
	Sunset Telephone Company	8 55
	C. H. Ashworth, supplies	3 65
	M. E. Blasdel, Secretary, incidentals	8 85
	F. Kuchenbeiser & Son, two scroll brackets	4 00
	M. E. Blasdel, Secretary, expenses for Board meeting, etc.	42 50
Aug. 28	Salaries for August, 1896	2,802 23
	L. Oubert, cleaning carpets	26 00
	Goodyear Rubber Company, rubber strips for stairways	60 00
	San José Light and Power Company, gas for June	20 40
	San José Light and Power Company, gas for July	4 40
	M. Barnes brickwork, repairing chimney	15 00
	Sunset Telephone Company	4 90
	M. M. Haas Co., stationery	9 85
	J. A. Belloli, gasoline	1 45
	Murison & Wright, printing	16 00
	L. Lion & Sons, carpeting office	51 95
	Otto Krause, hardware supplies	4 00
	H. W. Bachofen, janitor's supplies	17 55
	J. P. Jarman, paints, painting, etc.	77 48
	McNiel Bros., printing	1 50
	Boschken Hardware Company, hardware supplies	7 70
	Boschken Hardware Company, hardware supplies	7 15
	M. E. Blasdel, Secretary, incidentals	19 55
	M. E. Blasdel, Secretary, cash advanced for incidentals	8 90
	M. M. Haas Co., one set of codes	12 75
Oct. 3	Salaries for September, 1896	3,566 25
	J. P. Jarman, tinting room, etc.	13 30
	M. M. Haas Co., stationery	74 79

1896		General Fund—Continued.	
Oct.	3	W. W. Thompson, carpentering work	$23 50
		J. B. Cambers, four dozen stools	19 40
		San José Mercury, advertising training department	17 60
		Herald Publishing Co., advertising training department	11 15
		The News Publishing Co., advertising training department	10 45
		The Hicks-Judd Co., bookbinding	12 81
		Marsky & Hess, bookbinding	22 05
		Milton Campbell, zinc pans, etc.	7 10
		H. W. Conkling, barley and hay	17 55
		H. W. Bachofen, coal oil	1 95
		C. F. Willey, slating blackboards	4 20
		A. H. Abbott, one picture of Lincoln	5 24
		Henry Kuhn, stereoscope, etc.	2 75
		Bausch & Lomb Co., dissecting set	3 17
		Sunset Telephone Co.	10 75
		J. J. Zingg, keys, locks, etc.	7 45
		Thos. Curley, hack hire	5 00
		W. T. Garratt, valves, etc., for engine	17 75
		Boschken Hardware Co., hardware supplies	34 10
		San José Furniture Co., tables for laboratories	172 50
		J. C. Black, beeswax, etc.	4 00
		San José Light and Power Co., gas	7 40
		L. Lion & Sons, sixty loads of gravel	6 00
		Smith & Stalder, coal, fire brick, etc.	53 65
		Smith & Stalder, 50 pounds cement, etc.	12 00
		Elizabeth Blasdel, Secretary, incidentals	31 60
Oct.	31	Salaries for October, 1896	3,534 19
		M. M Haas Co., periodicals	70 20
		M. M. Haas Co., stationery	21 90
		S. C. V. M. & L. Co., 9 cords of wood	46 80
		San José Furniture Co., tables and chairs	68 00
		W. T. Garratt & Co., one stuffing box for engine	5 00
		S. C. V. M. & L. Co., lumber	12 90
		Chas. Truax, Greene & Co., model of ear	11 47
		Bausch & Lomb Co., one microscope	27 80
		John Stock Sons, hardware supplies	12 90
		John Stock Sons, four dozen tin plates	1 50
		J. P. Jarman, one gallon dustless oil	1 50
		Boschken Hardware Co., hardware sundries	1 35
		H. L. Miller, tagboard, ink	1 05
		Sunset Telephone Co.	12 90
		C. H. Riddell, killing and burying horse	4 00
		McNeil Bros., cutting and punching lot report cards	1 50
		Chas. C. Riedy, one microscope	30 00
		Elizabeth Blasdel, Secretary, incidentals	21 35
		George Denne, one picture frame	5 00
		San José Mercury, advertising training department	2 75
Dec.	8	Salaries for November, 1896	3,625 85
		San José Light and Power Co., gas	14 70
		L. Callisch, drugs for preceptress	10 25
		M. M. Haas Co., stationery	34 15
		A. Steiger Sons, 600 lbs. of clay for modeling	24 00
		H. L. Miller, 18 Shannon files	16 20
		California Distilling Co., 2 bbls. alcohol, and brokerage	67 50
		S. C. V. M. & L. Co., lumber	7 48
Dec.	9	Central Coal Co., 101 tons, 190 lbs. coal	596 40
		Alviso Steamboat Co., freight on coal	124 70
		Frederick Brown, weighing coal	6 50

1896 GENERAL FUND—Continued.

Dec. 9	T. H. Presho, one cord live oak blocks	$7 50
	Sunset Telephone Co.	8 35
	Payot, Upham & Co., kindergarten materials	4 90
	Chris. Hirth, hardware supplies	8 25
	E. H. Guppy & Son, one memorandum book, one blank book	1 75
	E. B. Miner, two batteries	2 00
	H. W. Conkling, hay	9 30
	Boschken Hardware Co., hardware supplies	4 00
	J. C. Black, 100 lbs. sal. soda	1 00
	Elizabeth Blasdel, Secretary, incidentals	19 95
	Farmers' Union, hardware supplies	14 74
	H. L. Miller, manila paper	1 76
Dec. 31	Salaries for December, 1896	3,625 85
	M. M. Haas Co., stationery	19 00
	M. M. Haas Co., periodicals	46 85
	S. C. V. M. & L. Co., 16 cords pine wood	83 20
	Matthew Presho, coal and barley	117 45
	Farmers' Union, hardware supplies, etc.	10 98
	Elizabeth Blasdel, Secretary, incidentals	11 75
	Schemmel & Brown, tuning and repairing pianos	12 50
	W. B. McCarley, hack hire	3 00
	Sunset Telephone Co.	6 00
	Boschken Hardware Co., window cord and screws	1 60
	J. J. Zingg, keys	1 75
	Farmers' Union, hardware, oil, etc.	2 96
1897.		
Feb. 5	Salaries for January, 1897	3,600 86
	Bosqui Engraving Co., 110 diplomas	91 30
	Bertha Warren, lettering 77 diplomas	19 25
	M. M. Haas Co., stationery	16 55
	T. H. Presho, 6 cords of wood	45 00
	Marsky & Hess, bookbinding, diploma tubes	17 30
	San José Furniture Co., one bookcase	13 50
	Claflin Dental Manufacturing Co., measuring instruments	12 00
	San José Light and Power Co., gas	9 10
	Schemmel & Brown Music Co., tuning two pianos	5 00
	Sunset Telephone Co.	5 85
	Boschken Hardware Co., wire, etc.	4 50
	Chris. Hirth, hardware supplies	4 22
	Milton Campbell, 12 zinc pans	1 25
	L. Lion & Sons Co., one shade and oilcloth	2 10
	R. Hellwig, batteries	14 05
	R. Kuchenbeiser & Sons, hardware	25 90
	Foss & Hicks, revenue brokerage, etc.	6 50
	San José Light and Power Co., gas	4 75
	Jas. H. Howard, shoeing horse	1 50
	Elizabeth Blasdel, Secretary, incidentals	14 55
	Samuel T. Black, Secretary Board of Trustees, April, 1896	20 00
	Hermann Bros., survey of grounds	85 00
Feb. 26	Salaries for February, 1897	3,525 86
	Eimer & Amend, hand scales, thermometers, etc.	108 00
	Bausch & Lomb Co., microscopes (18)	79 43
	M. M. Haas Co., stationery	24 60
	San José Light and Power Co., gas	22 05
	Buchanan Bros., brushes, etc.	18 75
	Matthew Presho, hay and barley	16 10
	James G. Biddle, psychological apparatus	24 40
	Boschken Hardware Co., hardware sundries	2 55

1897	General Fund—Continued.	
Feb. 26—	R. Hellwig, two batteries, etc.	$2 50
	Elizabeth Blasdel, Secretary, cash advanced for Ex. charges	20 35
	Elizabeth Blasdel, incidentals	23 20
Mar. 27—	Salaries for March, 1897	3,525 86
	M. M. Haas Co., stationery	35 60
	Smith & Stalder, 20 tons coal, and weighing same	172 40
	Bausch & Lomb Co., 4 microscopes	111 20
	Jas. D. Miner, tools for Manual Training Department	21 90
	Farmers' Union, hardware supplies	12 74
	Marsky & Hess, bookbinding, etc.	5 75
	San José Light and Power Co., gas	4 80
	Chris. Hirth, 10 lbs. solder	2 00
	Murison & Wright, printing 250 circulars	2 75
	F. Kuchenbeiser, repairs for pump	1 95
	McNeil Bros., printing	1 00
	S. C. V. M. & L. Co., lumber, etc.	5 34
	Boschken Hardware Co, hardware sundries	1 75
	E. W. Maynard, one dozen ink vents	1 50
	R. Hellwig, two batteries	2 00
	Smith & Stalder, one bbl. lime	1 75
	J. P. Jarman, dustless oil, etc.	3 35
	D. Rinaldo, rods and brackets	2 22
	Chute & Miner, two batteries	2 00
	George Denne, framing picture	5 85
	H. L. Miller, manila paper	2 15
	Sunset Telephone Co. (February)	8 35
	Sunset Telephone Co. (March)	18 50
	Elizabeth Blasdel, Secretary, express charges on apparatus	7 00
	Elizabeth Blasdel, incidentals	24 70
	Frank Smith, repairing batteries and clocks	2 50
April 30—	Salaries for April, 1897	3,632 67
	M. M. Haas Co., stationery	23 64
	San José Light and Power Co., eight Welsbach lamps	20 00
	San José Light and Power Co., gas	11 20
	T. H. Presho, one cord wood blocks	7 00
	S. C. V. M. & L. Co., one bench for manual training-room	49 00
	S. C. V. M. & L. Co., lumber and glass	8 60
	Jas. E. Addicott, sloyd knives	8 00
	L. M. Washburn, cash advanced for express charges	2 80
	Bausch & Lomb Co., nose piece for microscope	3 51
	Matthew Presho, barley	5 25
	Abramson-Heunish Co., four museum jars	8 65
	Chris. Hirth, plumbing, etc.	4 60
	Smith & Stalder, sack Cumberland coal	1 50
	John Stock Sons Co., hardware sundries	4 83
	Otto Krause, casting for gas fixtures	2 85
	C. H. Allen, cash advanced for seed, etc.	2 25
	Sunset Telephone Co.	22 45
	Elizabeth Blasdel, Secretary, incidentals	25 25
May 28—	San José Light and Power Co., gas	4 65
	M. M. Haas Co., stationery	14 70
	E. W. Maynard, stationery	8 52
	M. M. Haas Co., books	5 75
	Louis P. McCarthy, copy Statistician	3 50
	A. C. Wagener, books	64 00
	Marsky & Hess, bookbinding	16 70
	Salaries for May, 1897	3,541 01
	McNeil Bros., cutting and printing tag board	4 00

1897	GENERAL FUND—Continued.	
May 28	—Sunset Telephone Co.	$9 35
	S. C. V. M. & L. Co., lumber and mill work	8 94
	Elizabeth Blasdel, Secretary, incidentals	22 30
June	—Salaries for June, 1897	3,541 01
	E. W. Maynard, stationery	13 68
	Glenwood Lumber Co., laboratory tables	159 00
	C. W. Childs, balance of salary due	121 20
	Bausch & Lomb Co., microscopes	309 43
	Geo. Van Lone, 5½ cords of wood	20 50
	H. R. Bradford, carload of coal	96 94
	Harper's Weekly Club, books	12 90
	Farmers' Union, fire hose	30 53
	Chas. E. Tallmadge, books	32 50
	San José Light and Power Co., gas	6 90
	Bertha Warren, lettering diplomas	8 75
	E. W. Maynard, books	127 59
	W. K. Vickery, unmounted photographs	10 40
	J. P. Jarman, window shade	2 10
	Frank E. Smith, repairing clock	1 00
	S. C. V. M. & L. Co., mill work, etc.	8 50
	Schemmel & Brown, tuning pianos	7 50
	San José Light and Power Co., gas	15 40
	Elizabeth Blasdel, incidentals	24 40
	Boschken Hardware Co., hardware supplies	1 45
	Elizabeth Blasdel, Secretary, cash advanced to Prof. Keyes	15 00
	Bosqui Engraving Co., ten diplomas	8 30
	Sunset Telephone Co.	6 25
	Total amount expended	$46,925 41
	Balance in Tuition Fund	1,482 87
	Total	$48,408 28

APPROPRIATION FOR CARE OF GROUNDS.

Receipts.

	Amount of appropriation	$2,500 00
	Balance from forty-seventh fiscal year	5 96

Date of Auditing 1896.	*Disbursements.*	
July 28	—Payroll on grounds, July, 1896	$195 66
	Milton Campbell, hardware supplies	36 50
	Otto Kraus, 12 valves for engine, etc.	18 00
	F. Kuchenbeiser, supplies	17 50
	N. Tolle, extra labor on grounds	18 00
Aug. 28	—Payroll on grounds, August, 1896	199 66
Oct. 3	—Payroll on grounds, September, 1896	195 66
Oct. 31	—Payroll on grounds, October, 1896	199 66
	M. Cheney, extra labor on grounds	30 50
Dec. 8	—Payroll on grounds, November, 1896	100 00
Dec. 31	—Payroll on grounds, December, 1896	108 00
1897.		
Feb. 5	—Payroll on grounds, January, 1897	195 66
Feb. 26	—Payroll on grounds, February, 1897	187 66
Mar. 27	—Payroll on grounds, March, 1897	199 66
	Morgan Miles, 5 lbs. blue grass seed	1 25
	L. F. Sanderson, trees and shrubs	7 00

1897	CARE OF GROUNDS—Continued.	
Apr. 30	—Payroll on grounds, April, 1897	$104 00
	C. H. Allen, extra labor on grounds, April, 1897	18 00
	T. F. Brimson, plowing and harrowing grounds	9 00
	F. J. McCarley, shoeing horse	1 50
	S. Barnett, two sago palms	5 00
	R. D. Fox, two palms	15 00
	Morgan Miles, grass seed	10 50
	Matthew Presho, hay	10 80
	Farmers' Union, garden hose	59 30
May 28	—Payroll on grounds, May, 1897	195 66
	C. H. Allen, extra labor on grounds	24 00
	Ray Depperman, extra labor on grounds	13 00
	Farmers' Union, hose, hardware, etc.	10 01
	Matthew Presho, hay	9 75
	F. Schilling, blasting powder, etc.	2 30
	California Nursery Co., 1 tree	1 00
	John Stock Sons Co., 10 lawn sprinklers	22 50
	E. J. Natusch, straw	10 00
June	—Payroll on grounds, June, 1897	195 66
	C. H. Allen, extra labor on grounds	25 00
	Ray Depperman, extra labor on grounds	13 00
	John Morgan, 6 days' labor on grounds	9 00
	Matthew Presho, hay and barley	19 01
	W. T. Garratt & Co., couplings	12 60
	Total	$2,505 96

SPECIAL APPROPRIATION FOR REPAIRS.

	Total disbursements, forty-seventh fiscal year	$3,269 68
Date of Auditing 1896.	*Disbursements.*	
July 28	—F. Kuchenbeiser, 24 window guards	12 00
	Robert Summers, flooring laboratories, etc.	62 13
Aug. 28	—S. C. V. M. & L. Co., lumber	22 50
	W. W. Thompson, flooring halls, as per contract	437 05
	C. F. Willey, slating blackboards	66 40
	A. F. Stonehouse, repairing bridge between annex and main building	9 00
	F. T. Holland, kalsomining basement, painting, etc.	195 50
	S. M. Moreland, kalsomining annex, as per contract	276 00
	Milton Campbell, plumbing	233 85
	J. P. Jarman, papering and tinting rooms	209 68
	Robert Summers, changing water pipes, etc.	28 74
	Glenwood Lumber Co., three laboratory tables	175 80
1897 June	—Boschken Hardware Co., supplies	1 67
	Total appropriation	$5,000 00

SUMMARY OF REPORT.

Total income, forty-eighth fiscal year		$52,644 56
Paid for salaries of teachers, secretary, janitors, and engineer	$42,278 21	
Paid for books, periodicals, and bookbinding	448 20	
Paid for stationery, printing, and advertising	372 14	
Paid for furniture and apparatus	1,227 66	
Paid for fuel and gas	1,511 44	
Paid for repairs and improvements	2,153 80	

SUMMARY OF REPORT—Continued.

Paid for general supplies	$430 10	
Paid for miscellaneous expenses	370 32	
Paid for incidentals—stamps, telegrams, etc.	347 65	
Paid for rent of telephone and service	122 20	
Paid for salaries of gardeners and extra labor on grounds	1,411 50	
Paid for hardware, tools, valves, hose, etc.	333 86	
Paid for general supplies for grounds	154 61	
Total expended		$51,161 69
Balance in Tuition Fund		1,482 87
Total income		$52,644 56

FOR THE FORTY-NINTH FISCAL YEAR, ENDING JUNE 30, 1898.

GENERAL FUND.

Receipts.

Amount of appropriation for supplies of State Normal School at San José, forty-ninth fiscal year	$4,000 00
Balance in Tuition Fund from forty-eighth fiscal year, as per last report	1,482 87
Amount received from Training School tuitions during forty-ninth fiscal year	1,342 87
	$6,825 74

Disbursements.

Date of Auditing 1897.		
July 31	Buchanan Bros., 10 floor brushes at $3	$30 00
	Central Coal Co., 51 $\frac{1120}{2240}$ tons coal	368 44
	Alviso Steamboat Co., freight charges on coal	65 91
	Farmers' Union, oil and hardware supplies	9 16
	Milton Campbell, repairing roof, etc.	27 85
	J. P. Jarman, 1 bbl. oil, paint and brush	26 35
	J. C. Black, supplies for janitor	11 65
	E. W. Maynard, stationery	3 40
	Jury & Clevenger, 1500 catalogues, 2500 circulars	172 30
	Hotel Vendome, expense of Joint Board meeting	13 50
	Elizabeth MacKinnon, salary from July 1 to August 27, 1896	275 58
	R. E. Wilhoit, expense attending Board meeting	6 00
	Mrs. E. A. Wilson, expense attending Board meeting	2 60
	Herald Publishing Co., advertising	8 00
	Mercury Publishing Co., advertising	6 00
	Sunset Telephone Co., rent of 'phone and service	8 20
	A. H. Randall, paid incidentals	8 05
	F. J. McCarley, shoeing horse	1 50
	Elizabeth Blasdel, Secretary, services as Secretary of Board, for five months, ending June, 1897	62 50
	Elizabeth Blasdel, Secretary, incidentals for school	22 90
Aug. 28	J. P. Jarman, wall paper, dustless oil, etc	15 69
	Milton Campbell, labor on heating apparatus, etc.	90 30
	E. W. Maynard, stationery	15 36
	Boschken Hardware Co., hardware supplies	9 15
	San José Furniture Co., 11 yards of matting	3 30
	W. E. Coombs, slating blackboards	91 68
	Frank E. Smith, cleaning and repairing clocks	9 50
	S. C. V. M. & L. Co., lumber	10 35
	L. Loeb Bros., crash toweling	4 40

1897 GENERAL FUND—Continued.

Aug. 28—	F. Kuchenbeiser, dampers for heating apparatus	$35 00
	San José Light and Power Co., gas	1 10
	The Evening News, advertising	3 50
	J. C. Black, one dozen agate cups	1 50
	F. Kuchenbeiser & Son, repairing and sharpening weed cutter	3 00
	Bradford & Co., 3 tons coal, at $4	12 00
	Sunset Telephone Co., rent of 'phone and service	12 50
	Elizabeth Blasdel, incidental expenses	17 60
Sept. 30—	J. P. Jarman, oil, paint, etc.	44 64
	Geo. B. McKee & Co., glass and putty	7 90
	Bradford & Co., 22$\frac{1605}{2240}$ tons coal	101 65
	San José Light and Power Co., gas	2 20
	H. L. Miller, stationery	11 90
	Geo. A. Steiger, 300 lbs. clay, at 4c.; cartage, 50c.	12 50
	M. M. Haas Co., stationery	13 20
	S. C. V. M. & L. Co., 3 lights glass, setting, etc.	6 70
	L. Aubert, cleaning and laying carpets	14 21
	Boschken Hardware Co., shears, thermometers, etc.	7 10
	San José Furniture Co., 8 leather chair bottoms	2 00
	J. B. Chambers, 18 oak stools	8 60
	E. W. Maynard, stationery	12 14
	Milton Campbell, 400 ft. 1-inch pipe, etc.	24 30
	Sperry Flour Co., weighing 19 loads coal, at 25c.	4 75
	Bradford & Co., weighing 8 loads coal, at 25c.	2 00
	Herald Publishing Co., advertising	4 00
	"The Evening News," advertising	5 90
	San José Mercury Co., advertising	16 00
	Barlow & Soberanes, 1 set rubber type	2 00
	John O. Halloran, 2 loads of sand, at $1 50	3 00
	Jury & Clevenger, 2,000 recitation blanks	8 00
	India Alkali Works, 1 bbl. savogran	7 44
	Homer Prindle, cultivator handles	2 25
	Geo. P. Rider, 60 watch crystals	1 75
	Sunset Telephone Co., rent of 'phone and service	6 15
	Elizabeth Blasdel, Secretary, incidental expenses	20 10
	Elizabeth Blasdel, Secretary, cash advanced	12 35
Oct. 30—	M. M. Haas Co., stationery	20 90
	H. L. Miller, manila paper, etc.	3 57
	E. H. Guppy, one case chalk	7 00
	San José Light and Power Co., gas	8 40
	Bradford & Co., 23$\frac{1275}{2240}$ tons coal	106 78
	J. A. Belloli, 8 cords of wood, at $5 40	43 20
	Milton Campbell, pipe, hardware supplies	21 35
	McNeil Bros., printing report cards	18 50
	Boschken Hardware Co., hardware supplies	2 25
	Bradford & Co., weighing coal	1 50
	W. K. Vickery, 5 unmounted photographs	1 25
	Sunset Telephone Co., rent of 'phone and service	6 55
	Elizabeth Blasdel, Secretary, incidental expenses	20 85
Nov. 30—	Frank E. Smith, repairing clock	1 50
	M. M. Haas Co., stationery	9 00
	W. M. Fredericks, repairing chimneys	12 50
	San José Light and Power Co., gas	13 50
	S. C. V. M. & L. Co., lumber and glass	29 73
	Chas. C. Navlet, seeds, bulbs, etc.	26 35
	Martin Ortgo, hauling 9 loads of sand, at 75c.	6 75
	Farmers' Union, barley	3 41
	Milton Campbell hardware, etc.	17 90

1897	GENERAL FUND—Continued.	
Nov. 30—	Harper's Weekly Club, ten volumes for library	$20 90
	Louis L. Gorr, painting roof	30 00
	M. M. Haas Co., books and periodicals	47 80
	Bradford & Co., $19\frac{865}{2240}$ tons coal	86 62
	Rucker Bros., one couch and cover	17 50
	Schemmel & Broan Music Co., 10 music books	9 50
	F. Kuchenbeiser & Son, repairing weed cutter, etc.	6 55
	Sunset Telephone Co., rent of 'phone and service	5 55
	Louis L. Gorr, distributing circulars	3 00
	Bradford & Co., weighing coal	1 25
	J. P. Jarman, 6 boxes charcoal, at 20c.	1 20
	Elizabeth Blasdel, Secretary, incidental expenses	11 17
Dec. 22—	A. D. Daunes, 25 tons 400 lbs. coal at $8	201 60
	E. W. Maynard, stationery	21 40
	L. Aubert, cleaning carpet	2 66
	Schemmel & Brown, tuning piano	2 50
	San José Light and Power Co., gas	11 50
	H. L. Miller, manila paper, etc.	2 10
	Oscar Promis, four glass globes, etc.	1 80
	Geo. McKee Co., paint and brushes	1 60
	Sunset Telephone Co., rent of 'phone and service	4 50
	J. A. Belloli, 9 cords wood, at $5 75	51 75
	McNeil Bros., 5000 library cards	6 25
	C. S. Crydenwise, two rake heads	2 00
	Milton Campbell, copper lamp and filler	1 35
	Boschken Hardware Co., hardware, scissors	2 30
	Elizabeth Blasdel, Secretary, incidental expenses	10 85
1898.		
Jan. 31—	San José Light and Power Co., gas	6 35
	M. M. Haas Co., stationery	11 23
	Bertha Warren, lettering diplomas	5 00
	E. W. Maynard, 48 small globes	11 87
	Schemmel & Brown Music Co., tuning piano	2 50
	Theo. F. Heple, plastering one room	14 00
	A. D. Daunes, 170 fire bricks	10 20
	Wm. Chappell, two cords of wood at $7	14 00
	A. D. Daunes, 1 bbl. cement	3 25
	Chris. Hirth, one large garbage box	4 50
	Geo. B. McKee Co., paint, etc.	5 45
	S. C. V. M. & L. Co., lumber, etc.	42 49
	Bradford & Co., $19\frac{845}{2240}$ tons coal	88 31
	C. A. Barker, 23½ tons coal at $7 75	182 12
	H. L. Miller, manila paper, etc.	2 52
	Farmers' Union, coal oil, etc.	11 33
	John Stock Sons Co., 6 Syphonia closets and fittings	223 50
	McNeil Bros., printing 500 circulars	12 50
	W. W. Thompson, carpenter work	16 25
	J. W. Thompson, carpenter work (2½ days)	6 25
	J. J. Zingg, keys, etc.	3 90
	Sunset Telephone Co., rent of 'phone and service	4 85
	San Jose Furniture Co., 3¼ yds. linoleum	1 70
	Frank E. Smith, repairing clock	1 00
	Bradford & Co., weighing coal	1 25
	Payot, Upham & Co., kindergarten material	2 48
	Elizabeth Blasdel, Secretary, incidentals	25 40
	McNeil Bros., rebinding books, printing	25 90
	Bosqui Engraving and Printing Co., 15 diplomas	12 45

1898	GENERAL FUND—Continued.	
Feb. 28—	M. M. Haas Co., stationery	$25 08
	W. W. Montague & Co., 30 gal. boiler	13 63
	San José Light and Power Co., gas	12 80
	S. C. V. M. & L. Co., lumber	12 33
	R. E. Wilhoit, expense attending Board meeting	5 50
	Mrs. E. A. Wilson, expense attending Board meeting	2 60
	J. M. Pitman, expense attending Board meeting	1 50
	Sunset Telephone Co., rent of 'phone and service	5 15
	W. W. Thompson, making case for physiology lab.	5 00
	Geo. B. McKee & Co., paint, etc.	1 60
	Milton Campbell, 500 ft. hose, at 19½c.	97 50
	Cunningham, Curtiss & Welch, writing chart	1 14
	Elizabeth Blasdel, Secretary, incidentals	10 72
Mar. 31—	S. C. V. M. & L. Co., lumber	118 70
	M. M. Haas Co., tennis court apparatus	97 75
	Milton Campbell, 500 ft. hose	97 50
	J. A. Belloli, 8 cords pine wood, at $5 50	44 00
	Farmers' Union, one harrow, hardware supplies	16 39
	M. M. Haas Co., stationery	11 75
	Boschken Hardware Co., hardware supplies	7 75
	Sunset Telephone Co., rent of 'phone and service	6 75
	H. L. Miller, stationery	3 49
	J. P. Jarman, dustless oil, etc.	2 86
	T. M. White, making elbow pattern	3 00
	C. A. Tupper, printing cards for library	12 00
	C. Y. Pitman, watchman	40 00
	Elizabeth Blasdel, Secretary, incidentals	10 30
April 29—	W. T. Garratt, 40 brass valve-springs	8 25
	Sunset Telephone Co., rent of 'phone and service	7 05
	M. M. Haas Co., stationery	8 83
	Tesla Coal Co., 16 $\frac{1505}{2240}$ tons coal	74 60
	Buchanan Bros., six turkey-feather dusters	7 50
	S. C. V. M. & L. Co., lumber	33 21
	H. L. Miller, paper, etc.	4 05
	George B. McKee & Co., one barrel whiting	11 40
	J. M. Pitman, expense attending Board meeting at Los Angeles, April, 1898	50 00
	A. H. Randall, expense attending Board meeting at Los Angeles, April, 1898	50 00
	J. E. Doolittle, expense attending Board meeting at Los Angeles, April, 1898	50 00
	Mrs. E. A. Wilson, expense attending Board meeting at Los Angeles, April, 1898	48 75
	Elizabeth Blasdel, Secretary, incidentals	21 55
	Farmers' Union, hardware supplies	9 44
	Boschken Hardware Co., wire netting	2 05
	C. A. Tupper, printing three registers	7 00
	F. Schilling & Son, baseball and bat	3 30
	C. Y. Pitman, watchman	40 00
May 31—	C. A. Barker, 25 tons coal at $7 75	197 35
	A. D. Daunes 14 $\frac{1400}{2240}$ tons coal at $8	117 60
	M. M. Haas Co., stationery	23 36
	San José Furniture Co., one couch	15 00
	San José Light and Power Co., gas	8 95
	Sunset Telephone Co., rent of 'phone and service	5 65
	Boschken Hardware Co., hardware supplies	2 90
	O. A. Hale, one 10-foot bunting flag	10 00
	C. Y. Pitman, watchman	40 00

1898	GENERAL FUND—Continued.	
May 31	A. D. Daunes, cement and gypsum	$1 90
	Elizabeth Blasdel, Secretary, incidental expenses	26 70
July 2	Bertha Warren, lettering 72 diplomas at 35c.	25 20
	M. M. Haas Co., stationery	10 60
	Sunset Telephone Co., rent of 'phone and service	7 40
	San José Light and Power Co., gas	8 10
	H. L. Miller, stationery	6 60
	I. Loeb Bro., 73½ yards canvas at 9c.	6 60
	Boschken Hardware Co., hardware supplies	3 60
	J. C. Black & Son, one basket ball	3 00
	J. J. Zingg, keys, etc.	1 50
	George B. McKee & Co, 35 gallons paint, oil, etc.	59 90
	San José Light and Power Co., two Welsbach lamps	4 00
	Alfred C. Eaton, printing 1,500 catalogues, etc.	92 00
	C. Y. Pitman, watchman	40 00
	Garden City Floral Co., rent of palms, etc.	15 00
	S. C. V. M. & L. Co., glass and lumber	1 89
	News Printing Office, printing circulars	1 50
	Frank Smith, repairing clock	1 00
	Elizabeth Blasdel, Secretary, incidentals	19 35
	S. T. Black, traveling expenses attending graduation and addressing class	17 90
	Bosqui Engraving and Printing Co., 80 diplomas	66 40
	Total	$5,472 21
	Total amount expended	$5,472 21
	Balance in Tuition Fund June 30, 1898	896 23
	Balance in Supplies appropriation	457 30
	Total	$6,825 74

APPROPRIATION FOR SALARIES.

Receipts.

	Amount of appropriation for salaries of officers, teachers, and employés of the State Normal School at San José, forty-ninth fiscal year	$46,000 00

Disbursements.

Date of Auditing. 1897.		
July 31	Paid salaries for July, 1897	$3,656 62
Aug. 28	Paid salaries for August, 1897	3,656 62
Sept. 30	Paid salaries for September, 1897	3,641 62
Oct. 30	Paid salaries for October, 1897	3,661 62
Nov. 30	Paid salaries for November, 1897	3,661 62
Dec. 22	Paid salaries for December, 1897	3,661 62
1898.		
Jan. 31	Paid salaries for January, 1898	3,661 62
Feb. 28	Paid salaries for February, 1898	3,661 62
Mar. 31	Paid salaries for March, 1898	3,661 62
Apr. 29	Paid salaries for April, 1898	3,611 62
May 31	Paid salaries for May, 1898	3,661 62
July 2	Paid salaries for June, 1898	3,811 62
	Total amount expended	$44,009 44
	Balance, June 30, 1898	1,990 56
	Total	$46,000 00

APPROPRIATION FOR LIBRARY, MUSEUM, AND SCIENTIFIC APPARATUS.

Receipts.

	Amount of appropriation	$1,250 00

Disbursements.

Date of Auditing.		
1897.		
Sept. 30	E. W. Maynard, books and periodicals	$31 07
	M. M. Haas Co., periodicals	69 45
	Marsky & Hess, bookbinding	21 70
Oct. 30	Whitaker & Ray, maps, charts	60 71
	Whitney Electrical Co., one ammeter	17 25
	M. M. Haas Co., eight sets drawing cards, at 25 cents	2 00
Nov. 30	S. C. V. M. & L. Co., five sand modeling tables	38 00
	Whitaker & Ray, one history chart	17 00
	Justinian Caire Co., one dozen glass bulbs	24 50
Dec. 22	Franklin Educational Co., physical apparatus	96 23
	J. D. Miner, tools for manual training department	61 00
	Chandler & Barber, two dozen Sloyd knives	9 60
	Queen & Co., one set brain models	5 50
1898.		
Jan. 31	Bausch & Lomb Co., microscopes, etc.	156 68
	Eimer & Amend, flasks for chemical laboratory	31 20
	Franklin Educational Co., physical apparatus	25 66
	Cherrir & Co., one thermometer	17 00
Feb. 28	M. M. Haas Co., books	408 21
Mar. 31	Library Bureau, fifteen cloth binders	14 70
Apr. 29	Harpers' Weekly Club, 10 volumes for library	20 90
	M. M. Haas Co., books	17 55
	W. B. Saunders, physiology text-book	6 00
	Bausch & Lomb, telescope objective, etc.	10 10
	Wm. F. Nolte, mounting seals, birds, etc.	42 00
May 31	J. C. Hemler, "Life of Frances E. Willard"	2 00
July 2	M. M. Haas Co., two books for library	4 00
	Total amount expended	$1,210 01
	Balance in fund	39 99
	Total	$1,250 00

APPROPRIATION FOR CARE OF GROUNDS.

Receipts.

	Amount of appropriation	$2,500 00

Disbursements.

Date of Auditing.		
1897.		
July 31	Payroll on grounds, July, 1897	$138 00
	G. A. Paul, boring well 120 feet, and cutting pipe	125 00
	Peter Rosenbaum, four days' labor on grounds	8 00
Aug. 28	Payroll on grounds, August, 1897	141 00
	F. Kuchenbeiser, pump flange, cutting thread, etc.	5 00
	F. J. McCarley, shoeing horse	1 50
Sept. 30	Payroll on grounds, September, 1897	116 00
	T. P. Moore, 5 tons of hay, at $14	70 00
Oct. 30	Payroll on grounds, October, 1897	124 00
	Mangrum & Otter, one 36-inch lawnmower	140 00
	Farmers' Union, hardware supplies, barley	5 09
	F. J. McCarley, shoeing horse	1 50
Nov. 30	Payroll on grounds, November, 1897	130 00
	Nash & McReynolds, 23 loads of gravel, at $1 50	34 50
	F. J. McCarley, shoeing horse	1 50

1897	Appropriation for Care of Grounds—Continued.	
Dec. 22	Payroll on grounds, December, 1897	$130 00
	Farmers' Union, pipe, hardware, etc.	63 73
	Jessamine Gardens, bulbs, plants, etc.	12 80
	J. A. Belloli, 35 lbs. rye grass seed, at 10c.	3 50
1898.	Chas. Navlet, 24 lbs. grass seed, at 10c.	2 50
Jan. 31	Payroll on grounds, January, 1898	129 00
	Chas. Navlet, 20 lbs. blue grass seed	2 50
	Chas. Whner, 110 loads of earth, at 15c.	16 50
	R. D. Fox, one palm tree	10 00
	Milton Campbell, lawn sprinkler, fittings, iron	3 80
	F. J. McCarley, shoeing horse	1 50
	W. B. McCarley, horse hire and harness, 8 days, at 75c.	6 00
Feb. 28	Payroll on grounds, February, 1898	127 50
	John Stock Sons, pipe, etc.	38 91
	Boschken Hardware Co., 864 sq. ft. wire netting, at 1½c.; nails, pruning shears, etc.	7 92
	California Nursery Co., 28 trees	11 15
	Chas. Navlet, 20 lbs. blue grass seed	2 50
	F. Schilling & Sons, powder, fuse, caps	2 35
Mar. 31	Payroll on grounds, March, 1898	162 00
	F. J. McCarley, shoeing horse	1 50
Apr. 29	Payroll on grounds, April, 1898	139 00
	Milton Campbell, 450 feet hose, at 19½c.	87 75
	F. Kuchenbeiser, sharpening weed cutter	2 95
	Geo. H. Tay Company, 30 one-inch valves, at 75c.; drayage, 25c.	22 75
	Jessamine Gardens, bulbs	3 90
	F. E. Stark, hauling roller from grounds	3 00
	John L. Childs, bulbs, seeds, etc.	4 55
May 31	Payroll on grounds, May, 1898	140 50
	Milton Campbell, 8 dozen faucet washers, etc.	2 55
July 2	Payroll on grounds, June, 1898	137 50
	Deere Implement Company, one mower	50 00
	Jas. W. Dixon, 1 set of harness	20 50
	Chas. C. Navlet, grass seed	5 50
	Milton Campbell, sprinkler tips	2 00
	F. Kuchenbeiser, iron work, material, etc.	29 40
	Total amount expended	$2,428 60
	Balance in fund	71 40
	Total	$2,500 00

SUMMARY OF REPORT.

Total income, forty-ninth fiscal year		$56,575 74
Paid for salaries of officers, teachers, janitors, engineer, and watchman	$44,507 52	
Paid for books and periodicals	673 78	
Paid for stationery	239 35	
Paid for printing and advertising	399 35	
Paid for furniture and apparatus	621 37	
Paid for fuel and gas	1,759 32	
Paid for general supplies	623 86	
Paid for repairs and improvements	584 20	
Paid for miscellaneous expenses	329 80	
Paid for incidentals—stamps, telegrams, etc.	237 89	
Paid for rent of telephone and service	80 35	
Paid for expenses of trustees attending meetings	216 95	

SUMMARY OF REPORT—Continued.

Paid for museum expenses	$42 00	
Paid for salaries of gardeners and extra labor	1,622 50	
Paid for general expenses for care of grounds	330 77	
Paid for hardware, pipe, etc	525 45	
Paid for boring wells, etc	130 00	
Paid for lawn mowers and sprinklers	195 80	
Total expended		$53,120 26
Balance salaries appropriation		1,990 56
Balance supplies appropriation		457 30
Balance library and apparatus appropriation		39 99
Balance grounds appropriation		71 40
Balance tuition fund		896 23
Total		$56,575 74

REPORTS OF PRESIDENT.

SAN JOSÉ, CAL., June 25, 1897.

To the Honorable Board of Trustees of the State Normal School, San José:

GENTLEMEN: I have the honor of submitting to you the following report of the school, for the year ending June 30, 1897.

ENROLLMENT.

Three years' course, Senior Class	110
Four years' course, Fourth Year	20
Four years' course, Third Year	143
Four years' course, Second Year	149
Four years' course, First Year	219
Training Department	172
Visiting teachers	43
Total number enrolled	856

GRADUATES.

Graduated during the year	107
Total number of graduates of the school	2,511

ADMISSIONS.

Graduates of accredited High Schools, admitted to Third Year	54
Other High School students	38
Holders of Grammar School diplomas (upper half)	65
Teachers holding certificates	20
Graduates of Training Department	23
Admitted on examination	24
Total number of new students	224

In the Normal Department forty-two (42) counties of California are represented.

There have been employed, during the school year, the Principal, twenty-two regular teachers, one special teacher of music, one librarian, one assistant librarian, curator of the museum, one engineer, one janitor, who selects his own assistants, and two men regularly on the grounds.

Ninety students have been graduated from the school, and I now present the names of 19 more, who have completed the full course of study, training, and practice prescribed by your honorable body, and have been recommended by the Faculty for graduation:

Branstetter, F. Maude
Carroll, Mary Pius
Comfort, Cora E.
Cook, Gertrude E.
Doyle, Dettie I.
Fogg, Grace A.
Ford, Gertrude M.
Freitag, Gertrude
Harrington, Cora G.
Holmes, Emily M.
Hudson, Mattie B.
Hughes, Carmela M.
Jenkin, Annie E.
Lenfest, Lela A.
Lindsey, Lulu
McGough, Thomas M.
Ross, Nettie T.
Wilson, Isabelle
Winchester, Heloise, J.

Eight of these are the first in this school to complete the work of the four years' course. They have done exceptionally good work in the school, and we feel confident that they will do excellent work in the schools of the State.

The changes made by your honorable body, during the year 1896, in the regulations pertaining to the admission of students to the school, mark an era of advancement. The school is feeling the helpful influence of these new regulations in better scholarship, and in strong professional spirit. The work of the school this year shows that there has been a continued and healthful growth, the aim throughout being to give to the students, first, ability and professional training, and second, culture and refinement. Whenever possible, individual work is done and laboratory methods pursued, the plan being to make every exercise, as far as possible, serve as a model lesson to illustrate some principle or method, and it is expected that every exercise in the school will have direct bearing upon the profession of teaching.

Many of the teachers of the school have given years of study to their preparation for this work, and this preparation has been supplemented by a wide and successful experience. The State is to be congratulated upon the wise selections your honorable body have made in the past. Too much care cannot be exercised in selecting the teachers of a school, the influence of which is so powerful and far-reaching, and affects directly the character of the future citizens of the State.

The manual training laboratory is now fully equipped with benches, tools, and lockers to accommodate classes of thirty-six. Each student has a bench and a set of tools which he is required to keep in order. Class work in this department is done mainly with a view to teaching the subject. It is the aim to correlate manual training with other subjects, thus making each more comprehensive by giving the abstract thought a concrete foundation. Special attention is given to the purpose and aim of this line of work and the methods of teaching the same in the common schools. Special courses in manual training for the fifth, sixth, seventh, and eighth grades have been planned and are at present being carried out successfully in the Training School, where a modern manual training-room has been carefully and economically fitted up and equipped.

The botanical laboratory was supplied during the early part of the year with three laboratory tables, each containing six cupboards and twelve drawers, accommodating eighteen students, eighteen dissecting microscopes and other apparatus to complete the set. As the tables and apparatus in this department would accommodate but half the number of students usually assigned to the class in this work, thereby making it necessary to carry on two kinds of work at the same time in the same room, very much to the detriment of each class of work, I

have ordered, with the approval of the Executive Committee, three tables similar to those already furnished and eighteen more dissecting microscopes, a number sufficient to complete the set for the entire class. This additional furniture and apparatus will place the botanical laboratory in excellent condition.

During the year a suitable room, with good light, has been set aside as a zoölogical laboratory and furnished with necessary tables, stools, and cupboards for apparatus. The work has been well and economically done, and is highly satisfactory as far as it goes, but as it would be of little value to the school to have a laboratory with only tables and empty cupboards, without tools with which to work, I have ordered a sufficient supply of apparatus to equip this department, so that it will be in good working condition at the commencement of the next school year.

The physiological laboratory has received, during the year, five good compound microscopes, making twelve in all in this department, and I have now ordered twelve cheap, but excellent, dissecting microscopes for this department.

The chemical, physical, and psychological laboratories have each received additional apparatus this year. By a judicious expenditure of a few hundred dollars annually, these departments can be equipped and maintained in a highly satisfactory condition. In fact, the State is to be congratulated that for the first time in the history of this school each department of science is able to do individual laboratory work.

In the professional work of the school the student is expected to become familiar with the general aims and purposes of education; to establish the goal and ideal toward which he is expected to work; to acquaint himself with the work that has been done in the study of children, and to be able to point out the direction in which the study of school children will prove most valuable. Students are taught the methods of inductive science; to do practical work, and to make observations in the same; to study theories of development, and to plan the course of study arranged according to this development.

The work in psychology is designed to acquaint the student with the physiology and psychology of sense perception, the physiology of nervous action by the way it underlies mental activities, to study physical growth and its significance, and the methods of testing the senses. This is followed by a study of discrimination, association, attention, and memory, with as much experimental work as possible. Attention is also given to the subject of instinct, habit, heredity, etc.

On taking charge of the school one year ago, I found the department of mathematics especially weak. The subject of arithmetic, which every graduate is expected to be able to teach, had been sadly neglected. On this account I have been obliged to give a large part of my time, that

could be spared from the executive work of the school, to this subject. This, in justice to the school, cannot be continued. The Principal should be entirely free to work in any and every department whenever and wherever his influence is needed to unify the work and shape the policy of the school. I therefore recommend that a special teacher of arithmetic be employed, and that no one be selected who is not thoroughly familiar with Normal methods of instruction in this important subject.

The time given to physics in the four years' course is one full year, and to chemistry thirty weeks. In the three years' course thirty weeks were given to physics and but twenty weeks to chemistry. Chemistry now comes earlier in the course, thereby materially increasing the amount of work. These new conditions make it impossible for two teachers to do the work required in these two subjects satisfactorily; further than this, additional help is needed in physical geography. I therefore recommend that an assistant teacher of chemistry be elected.

As the special work of the school is to fit its students to teach the elementary branches in the primary and grammar schools of the State, and as a sufficient amount of time, in my opinion, is not now given to these subjects in the Normal School, I further recommend that a teacher who has been especially trained in the methods of geography be selected.

One hundred and seventy-two (172) students have been enrolled in the Training Department during the present year. There should be at least double this number in order that the senior students of the Normal School may have a sufficient number of classes of the proper size for this practice teaching. Especially should the primary and intermediate grades be made larger. Excellent work has been done in this school during the year drawing to a close, but the effect of the hard times has made it difficult to induce pupils to return when once located in other schools where no tuition is charged. I therefore recommend that the rate of tuition for all grades below the eighth be fixed at $1 per month for one pupil; at $1 50 per month for two pupils from the same home, and $2 per month for three pupils from the same home; that in the eighth and ninth grades the tuition be fixed at $2 per month for one pupil; at $3 per month for two pupils from the same home, and at $4 for three pupils from the same home; that in all other cases the tuition be adjusted according to the above schedule.

A. H. RANDALL.
President.

SAN JOSÉ, CAL., June 23, 1898.

To the Honorable Board of Trustees of the State Normal School at San José:

MEMBERS OF THE BOARD: I have the honor of submitting the following report of the school at San José, under your charge, for the year ending June 30, 1898:

Total enrollment of the school during the year, 692.
123 of these were admitted to the school on Training School diplomas.
51 on examination.
247 on Grammar School diplomas.
43 on Teachers' certificates.
73 on Undergraduate work.
155 on High School diplomas.
Average number belonging to the school during the entire year, 589.

I now present the names of the following students who have completed the entire work required in the school, and have been recommended by the Faculty to your honorable body for graduation:

Abbott, M. Mabel	Hammond, L. Hortense	O'Hara, Nellie G.
Armstrong, Ella	Hewitt, Grace Stanton	Pfau, Mabel
Baldwin, Grace	Holbrook, Louise Altana	Plummer, Mabel
Blanchard, Estelle	Hopping, Luella	Potter, Rozeltha Lucile
Bowers, Edith Braiton	Johnston, Minnie	Quilty, Harriet Eleanor
Bynon, Rachel C.	Kane, Winifred	Quinlan, Elizabeth T.
Clark, Pearl E.	Kennedy, Margaret M.	Ray, Ida M.
Clements, Margaret	King, Grace M.	Read, Matie
Cooper, Elizabeth Proctor	Lindsay, Minnie E.	Rice, M. Lena
Devoy, L. Maude	Manlove, Myra B.	Savage, Geraldine
Devoy, Zoe H.	Mansfield, Sallie M.	Schau, Julia R.
Fullagar, Ida	McCabe, Josie	Schroder, Nellie Louise
Gabler, Mary Adillia	McCormack, Kate J.	Sullivan, Anna E.
Garratt, Florence L.	McCuaig, Blanche Anna	Thompson, Alice Gertrude
Naffziger, Elizabeth	Menihan, A. Selene	Thompson, E. Ruth
Gordon, G. Gertrude	Miller, Maude	Townsend, Maude I.
Gower, Fannie M.	Moore, Dorothea I.	Viney, Clara E.
Gunnuldson, Eva R.	Morgan, Millie A.	Wagner, Marguerite M.
Hall, Bertha Louise	Gibson, Daisy May	Walker, Helen Irene
Hall, Mabel S.	Nichols, Maude	Walton, Lottie G.
Harris, Iola M.	Noe, Gertrude	Williams, Carrie F.

Total number who have been graduated from the school since its organization, including the class presented to-day, 2,599.

All classes in the school are now working on the four years' course, and the June class of this year is the first that has taken the entire four years to complete the work of the Normal School. The value of the additional year's work, required in this course, in its broadening and strengthening influence and in giving to the students a higher and stronger professional spirit, cannot be over-estimated.

The purpose and aim of the school is to prepare teachers to do the work of the elementary and grammar schools of the State in a professional way, and in determining the length of time required in the

school and the composition of the courses of study this object is ever kept before the mind.

The utmost harmony has prevailed in the school during the year now drawing to a close.

The attendance has been greater than we anticipated, and for this reason we did not, at the commencement of the year, provide for so large a school as we have had, but on account of the general good feeling among the teachers and their willingness to do extra work, we have been able to provide suitable and efficient instruction in all the departments.

There has been a steady and constantly increasing growth in the professional spirit of the school, both in the faculty and in the student body.

The students have loyally and enthusiastically taken hold of many things of general interest to the school, and have rendered valuable assistance to the President and faculty. A spirit of self-reliance and self-control has thus been developed, and a feeling among both students and teachers that really efficient and valuable work can be done when there is unity of purpose and spirit in the school.

Radical changes have been made in the work and general management of the school only when such changes seemed to be an imperative necessity.

Much, however, has been done in systemizing and coördinating the work so as to produce more satisfactory results and avoid much unnecessary waste of time and energy. Each teacher in the school is now given an opportunity to do the special work for which he is best fitted, and is held responsible for results in his particular grade of work.

The teachers of allied subjects hold frequent meetings for conference and discussion, and in this way have been mutually helpful to each other and to the school.

The professional work of the school has been greatly changed and strengthened. The object of this course is to acquaint the students with psychology in its present state of development as a basis for method work; to show to the student the aims and purposes of education as an ideal for his work and to keep him in touch with the drift of modern educational thought and the great educational movements of the present day; to show how the educational thought of the present has come about through a gradual growth that has received contributions from many sources. Methods of teaching the various subjects found in the curriculum, based upon the philosophy of education, forms an important part of the work of this department.

PHYSICAL TRAINING.

Some system of physical training that would give to the students regular exercise in the open air, and at the same time would furnish proper relaxation from the mental strain incident to close application

in the school-room, has been felt to be an imperative necessity. Provision for such physical exercise has been satisfactorily planned and put into successful operation during the year now drawing to a close. At a comparatively trifling expense we have laid out and provided apparatus for nine tennis courts, three double handball courts, and an open-air gymnasium, 85x46 feet, for basket ball and other physical exercise. With these appliances we are able to give an hour to the entire student body for physical exercise twice a week. We feel that we have already been abundantly repaid for our trouble and outlay in the improved physical condition of the students and in the higher tone and spirit of the school. In addition to this out-of-door work we need a room for light physical exercise practice that can be adapted to the various grades of the public schools, and at the same time be helpful in maintaining the bodily health of the students of this school.

BOOKS AND SCIENTIFIC APPARATUS.

As stated in my last report, we have expended about one half of the money appropriated especially for the purchase of books for the library, and for apparatus. The various departments have each received additions to their equipments and stock of apparatus during the year, and our laboratories now offer unusually good facilities for excellent work.

Since the year 1895 many changes and improvements have been made in the equipment and furnishings of the laboratories, and many conveniences for individual work and investigation have been provided.

The chemical laboratory, then but half its present size, though better equipped than any other room in the institution, used for the teaching of science, lacked many of the conveniences of a modern laboratory, and on account of its size was entirely inadequate to the needs of the school. What is now the north half of this laboratory had been, up to this date, a coal and furnace room, 24x34 feet. This room was unfinished and without floor, and separated from the other part of the room by a brick wall. These two rooms have been thrown into one, finished, and furnished throughout with tables of the latest and most approved design, each section containing a set of apparatus for individual work. Adjoining the laboratory a scale room has been fitted up for accurate weighing, and a dark room for photography.

The physical laboratory, previous to 1895, had but three tables, and these not adapted to modern laboratory work. We had but little physical apparatus that was adapted to individual work, excepting some cheap pieces that had been made by the teacher of the subject and pupils of the school, and had been furnished without expense to the State. Within the past three years a room 10x25 feet has been added, and a room 34x36 feet has been equipped and furnished. Six modern tables, capable of accommodating seventy-two pupils, having all the

modern conveniences and improvements, and especially adapted to our work, have been provided. We have received about $800 worth of apparatus during the past two years, which has been carefully selected, and this, with the instruments that were made in the school, gives us a well-equipped physical laboratory. We believe we have to-day one of the best appointed physical laboratories in the State.

Up to July, 1896, the botanical class-room, 25x34 feet, was furnished with ordinary school desks. Since that time six tables, accommodating thirty-six students, have been furnished, and now each member of the class has the use of nearly five square feet of table surface, beneath which are a cupboard and two drawers. Thirty-six dissecting microscopes, each provided with a simple lens and an achromatic triplet, together with other apparatus, constitute the implements now in use.

The northwest room on the first floor, 25x34 feet, and capable of accommodating thirty-six students, in July, 1896, was changed from an ordinary recitation room to a zoölogical laboratory, and furnished with twenty-four tables, designed especially for this work; thirty-six excellent, but cheap, dissecting microscopes with single and double lenses, dissecting pans, jars, and other apparatus. Lockers for students' apparatus and cupboards for laboratory materials and school apparatus have also been furnished. This laboratory has an important addition in a small adjacent room carefully fitted with long sinks around two sides of the room, supplied with special conveniences for individual work. The light and fittings of this room combine to make it exceptionally valuable in Normal School work.

During the last two years eight compound microscopes and sixteen dissecting microscopes have been purchased for the physiological laboratory, and ten dissecting microscopes for the museum.

During the last three years many improvements have been made in the equipment of the Manual Training Department, both in the Normal building and in the Training School. In the main building a room 25x26 feet has been added and equipped, thereby nearly doubling the capacity of this department. In place of the three old redwood benches running the length of the room, we now have eighteen double benches furnished with lockers for pupils' work and for tools. The tool lockers have been furnished with a full set of new planes and sloyd knives, hammers, saws, etc., making a full set of tools and lockers for three classes of thirty-six each. In the Training Department a well-lighted room has been economically fitted up and equipped for manual training as taught in the grades. There is one carefully planned bench, furnished with a good set of wood-working tools, and fifteen desks protected by cheap "desk tops."

We have been able, by practicing the strictest economy, to purchase about nine hundred volumes of new books for the library, besides re-

binding the old books as they become worn out and unfit for further use, and at the same time have kept the library well supplied with all the latest and most useful magazines and periodicals.

In 1894 a room on the third floor was fitted up and furnished with necessary apparatus for a gymnasium, costing $300. Classes in this work, however, had to be discontinued, because the exercises jarred the building and it was thought to be unsafe. Since then this room has been set apart for a psychological laboratory and has been provided with tables and partially supplied with apparatus.

In 1895 the offices of President, Trustees. and Faculty were repapered and furnished throughout; cost, $289 35.

The floor in the Assembly Hall was originally level, rendering it extremely difficult for students in the rear of the room to see and understand what was being done in the front part of the hall. In December, 1895, this floor was elevated in the rear and sloped toward the front in such a way as greatly to improve its acoustic properties and to render it otherwise more convenient.

In July, 1896, all the rooms and halls in the Training School building, and all the halls on the first, second, and third floors of the Normal building, also the stairway leading from the first to the second floor, were kalsomined, at a cost of $265. At the same time the floors of the hallways on the first and second stories were relaid, at a cost of $413.

In September of the same year a pleasant lunch room was fitted up in the basement and furnished with tables and chairs to accommodate seventy-five students, costing $83 69.

The Training Department has been provided with apparatus for experimenting in elementary physics, and with sand modeling tables.

LIBRARY.

In no department of the school is the need of increased accommodations greater than in the library. This need is not the outcome of any sudden or temporary demand, but the result of a steady growth. When the building was first occupied, the place assigned to the library was a part only of the parlor, and but few students visited it daily. As the demands increased and new books were added, the front parlor also was used for library purposes. This double room becoming entirely inadequate, in 1893 the present room was fitted up. Large as it then seemed, the demand for books, shelf room, and seating capacity has entirely outgrown the accommodations. Seats for one hundred were thought more than enough. Now the room is frequently occupied by one hundred and fifty, or even more, and the surplus must stand or find seats on the floor. This crowded condition renders the ventilation entirely inadequate, and with the greatest care, students must either be placed in a

draught or must breathe foul air. It is unnecessary to enlarge upon the special need for pure air when the student is engaged in study. It may be asked why so large a number should be crowded into the library when there is ample room in the Assembly Hall. The answer is that the library by the present system of study is the reference "text-book" of the student. Not *one* book, but *many* are needed, and these, by many students, and the study hour must be spent where the books are available.

The present programme gives each regular student two study hours daily. These he is at liberty to spend (and the majority find it most profitable to spend) in the library. Students have free access to the shelves, and this opportunity, combined with a system of study which requires reference to the best books and periodicals of the day, is an invaluable means of education.

Aside from the demands of class-room work and essays upon assigned topics, the students have also the opportunity of spending leisure time in general reading outside of their special lines of study. The value of this as a means of the highest culture is too apparent to need special emphasis.

Besides the seating and ventilating capacity, there is an immediate need of more shelf room. More books are needed in every department and are being added as rapidly as appropriations will permit. But the limit of shelf room is reached, and there is no place for additional shelves. It is now proposed that a room be provided combining the advantages of a library and a study hall, that is, a large room in which there shall be shelving capacity for not only the present library books, but the additions of the future; and which shall provide seating and writing accommodations for 200 to 250 students. This would call for a room nearly or quite the size of the present Assembly Hall. Well lighted, warmed, and ventilated, it would furnish the ideal conditions for study—quiet, comfort, and books. With this new library there is also needed an increased appropriation for additional books, the daily demands now being far in excess of the supply.

KINDERGARTEN TRAINING.

I would most respectfully call your attention to the fact that the law relating to Normal Schools makes it the duty of the Board of Trustees to establish and maintain a training school of the kindergarten grade, and I recommend that special rooms be set apart and fitted up for this purpose, and that a teacher, who has been especially prepared for this work, be employed as a kindergarten trainer.

GROUNDS.

In determining what should be the work on the grounds, it has been thought that as the State has accepted from the City of San José Washington Square, it should in consequence of such acceptance keep the square in a condition reflecting credit both upon the city and the State. In pursuance of this thought, the first work was to restore those parts of the square that had been plowed up. This has been done at no inconsiderable expenditure of labor and money, and they are now in good condition. As a donation of about five acres to the city as a location for the High School relieves us from the care of that portion of the grounds, it has been thought best to put in the piping and bring into harmony with the rest of the grounds two other members. These also will soon be in good condition. Additional pipes have been laid in some of the established members as a matter of economy in watering, etc. To bring the entire square into subjection will require an additional expenditure for pipes and will also entail a greater expense in keeping it up during the dry season.

A considerable number of ornamental shrubs and trees have been put out and there has been a small expenditure for plants to beautify the surroundings. All these, however, are useful, particularly to the botany students, who have received much benefit from this source.

ART BUILDING.

As you are aware, the subject of setting apart another portion of the square for an art building is being discussed. If this is done it should be upon the member adjoining the High School, where it can be commodiously located without impairing the general harmony of the grounds.

WORK OF GRADUATES.

The value of Normal Schools as a part of the educational system of the State has been so thoroughly demonstrated that it is no longer necessary to present arguments in favor of their existence. It is, however, still true that from time to time the question arises—frequently upon the floor of the Legislature—"To what extent is the State justified in expending large sums for the support of Normal Schools?" "Do Normal graduates teach? If so, do the majority teach long enough to justify the amount expended for their training?" These questions received a very full and satisfactory answer in the "History of the State Normal School at San José," issued in 1889. Since that time, no statistics upon the subject have been printed, though a record has been kept of all information received concerning graduates. Each graduate, before receiving the diploma of the school, signs an agreement to report twice a year for three years, and once a year thereafter while in the profession

of teaching. From these reports, and from responses to a circular sent to all who have not lately reported, the following table of statistics has been compiled.

The table includes twenty-two classes, graduated during a period of eleven years—May, 1887, to June, 1897, inclusive; and the figures represent what is known of the work of these classes, from their graduation to the date of this report, June, 1898. The graduates of 1898 are, of course, not included, as they have not yet had a fair opportunity to begin their work.

It will be seen that over 93 per cent of the graduates included, have taught, and that nearly 55 per cent are teaching at the date of this report. Both these percentages would doubtless be raised, were reports received from *all* up to date; but we have included in the table only facts of which we have definite knowledge. Where no late reports have been received, we have taken account of only the amount of work last reported. Of the 80 who have not taught, 19 report that they have not succeeded in securing positions; 15 have pursued higher studies (some of these with a view to better preparation for teaching); 6 have chosen other professions; 3 have engaged in business; 10 have been prevented by ill health, and 7 by home duties; 10 married; and 10 gave no reason. It is probable that of the 14 from whom no reports have been received, a number have taught. The number of graduates from universities is probably larger than stated. Many have reported attending universities, but have failed to state whether or not they completed the course.

It should be added, that four members of the classes represented have been County Superintendents, making, with earlier classes, twenty graduates of the school who have held that office. With these preliminary explanations, the table is submitted, as follows:

WORK OF THE GRADUATES OF ELEVEN YEARS—*May, 1887, to June, 1897, as reported June, 1898.*

Date of Graduation.	Number in Class	Taught More than Five Years	Taught from Three to Five Years	Taught from One to Three Years	Taught One Year or Less	Not Taught Since Graduation	No Report Since Graduation	Teaching Now	Married	Deceased	Physicians and Lawyers	Other Occupations	Studied in Other Institutions	Graduates of Universities
May, 1887	66	32	9	12	10	3		17	28	5		3	4	1
December, 1887	60	27	10	12	6	4	1	19	21	2	4	1	8	1
May, 1888	61	25	13	15	5	1	2	19	18		1	2	5	1
December, 1888	58	24	11	11	10	1	1	22	21	2	2	1	11	3
June, 1889	71	37	17	12	2	3		30	32	2	2	1	14	3
January, 1890	64	39	14	8	2	1		29	22	2		3	10	1
June, 1890	92	47	19	13	11	1	1	42	26	4	2	1	16	1
January, 1891	37	17	3	10	3	2	2	15	13	1			4	1
June, 1891	67	36	14	12	3	2		37	15	2		3	6	
January, 1892	29	11	7	2	9			16	5	1			7	1
June, 1892	80	37	22	18	1	1	1	44	24	5	1	1	8	1
January, 1893	53	4	28	14	4	2	1	29	7		1	2	10	1
June, 1893	83		47	20	10	5	1	43	17	2			14	2
January, 1894	55		28	19	7	1		34	5	2			6	
June, 1894	79		35	33	6	3	2	55	5	2	1	1	11	
January, 1895	57		11	35	7	4		35	9		1	1	6	
June, 1895	99			88	8	2	1	84	4			1	7	
January, 1896	62			49	7	6		46	2	1		2	4	
June, 1896	104			51	33	19	1	71	2		1	2	7	
January, 1897	75			14	50	11		53					3	
April, 1897*	15				12	3		10				1		
June, 1897*	19				14	5		13	1				1	
Totals	1,386	336	288	448	220	80	14	763	277	33	16	26	162	17

The above table shows that over 93 per cent of these graduates have taught. *Small classes, because of the change from the three to the four years' course.

The most pressing needs of the school that should be provided for by the Legislature, in order to insure more efficient work in the school and best returns to the State, are:

1. A large room for library purposes.
2. A room for indoor physical culture, and more and better appliances and apparatus for out-of-door physical culture.
3. Reseating the Assembly Hall.
4. Painting the Annex.
5. Plumbing Annex for the purpose of supplying water in case of fire.
6. Fire hose and fittings for both buildings.

Respectfully submitted.

A. H. RANDALL,
President State Normal School, San José.

SIXTH AND SEVENTH ANNUAL REPORTS

OF THE

California State Board of Pharmacy

AUGUST 1, 1896, TO MAY 5, 1898.



SACRAMENTO:
A. J. JOHNSTON, : : : : : SUPERINTENDENT STATE PRINTING.
1899.

SIXTH ANNUAL REPORT

OF THE

CALIFORNIA STATE BOARD OF PHARMACY.

San Francisco, May 5, 1897.

To His Excellency James H. Budd, *Governor of California:*

Sir: Herewith is submitted the Sixth Annual Report of the California State Board of Pharmacy. There have been held three sessions: October 14, 1896, at San Francisco; January 13, 1897, at San Francisco; April 14, 1897, at San Francisco.

FINANCIAL STATEMENT.

Receipts.

Cash on hand August 1, 1896	$1,693 06
Receipts May 5, 1897	1,022 44
	$2,715 50

Disbursements.

Prosecutions and traveling expenses	$246 75
Stationery	27 48
Postage stamps	46 05
Express charges	9 95
Fees returned	15 00
Apparatus and merchandise	54 55
Clerical help	48 40
Rent	38 60
Secretary's salary	433 00
H. J. Finger	536 05
R. J. Van Voorhies	130 50
W. M. Searby	190 45
S. H. Melvin	48 00
J. W. Wood	414 60
J. H. Dawson	72 00
J. H. Flint	144 20
A. G. Orena	246 75
Cash on hand	13 17
	$2,715 50

Dr. S. H. Melvin was President of the Board. W. M. Searby, J. H. Flint, J. W. Wood, R. J. Van Voorhies, H. J. Finger, and J. H. Dawson were the members of the Board, the latter being the Secretary. At the meeting held on the 13th day of January, 1896, Mr. A. G. Orena of Los

Angeles presented his credentials as a member of the Board, having been appointed by Governor James H. Budd to fill the vacancy caused by the retirement of Dr. S. H. Melvin, term expired.

Professor William M. Searby was elected President.

A resolution was passed, expressing the high esteem in which Dr. Melvin was held by the Board, and testifying to his many admirable qualities.

There were registered between the 1st of August, 1896, and the 5th of May, 1897:

31 Graduates in Pharmacy.
36 Licentiates in Pharmacy.
56 Assistants in Pharmacy.

Respectfully submitted.

W. M. SEARBY,
President.
J. H. FLINT,
J. W. WOOD,
H. J. FINGER,
A. G. ORENA,
R. J. VAN VOORHIES,
JOHN H. DAWSON,
Secretary.

SEVENTH ANNUAL REPORT

OF THE

CALIFORNIA STATE BOARD OF PHARMACY.

To His Excellency JAMES H. BUDD, *Governor of California:*

SIR: Herewith is presented the Seventh Annual Report of the California State Board of Pharmacy.

The Board, which had been recently appointed by the Governor, met at 113 Fulton Street, San Francisco, on the twelfth day of May, 1897. The following named gentlemen were present and presented their credentials: William M. Searby, of San Francisco; A. J. Orena, of Los Angeles; S. Oberdeener, of Santa Clara; C. A. Seifert, of Oakland; E. A. Baer, of Bakersfield; S. L. Waller, of San Francisco, and H. M. Sale, of Los Angeles. It appearing that all the members had properly qualified, the Board organized by electing W. M. Searby temporary chairman, and then President. Mr. John H. Dawson, of the late Board, acted as Secretary pro tem.

John Calvert, of San Francisco, was elected Secretary and Treasurer of the new Board, with bonds of $2,000, to be obtained from a surety company.

FINANCIAL STATEMENT,

For the fiscal year commencing May 5, 1897, and ending May 4, 1898.

RECEIPTS.

May 5, 1897, cash in hand	$13 17
May 4, 1898, receipts	3,379 75
Due Treasurer	70 60
	$3,463 52

DISBURSEMENTS.

J. H. Dawson, one day as Secretary	$5 00
Postage stamps, registered letters and orders	105 95
Bond for Treasurer, Pacific Surety Company	20 00
Fees returned and errors	57 00
Writing certificates	9 36
Prosecutions and traveling	166 40
Rent office and College Pharmacy, etc.	181 65
Office expenses	20 90
Printing and stationery	151 27
Merchandise and apparatus	189 59
S. L. Waller	267 35

DISBURSEMENTS—Continued.

E. A. Baer	$300 40
C. A. Seifert	269 95
S. Oberdeener	282 70
W. M. Searby	180 00
H. M. Sale	215 00
A. G. Orena	321 00
Secretary's salary	700 00
Janitress	20 00
	$3,463 52

REPORT OF FINANCE COMMITTEE.

The undersigned, members of the Finance Committee of the California State Board of Pharmacy, have examined the accounts of John Calvert, Secretary and Treasurer, for the fiscal year ending May 5, 1898, and find that they are correct.

(Signed:) C. A. SEIFERT.
S. L. WALLER.

EXAMINATIONS.

Meetings were held for the examination of candidates for registration as Licentiates and Assistants, and for the registration of Graduates in Pharmacy on the following dates: San Francisco, May 12, 1897; San Francisco, July 14 to 17, 1897; Los Angeles, October 6 to 8, 1897; San Francisco, October 12 to 16, 1897; San Francisco, January 12 to 15, 1898; Los Angeles, April 6 to 8, 1898; and San Francisco, April 13 to 16, 1898.

It will be seen that seven meetings were held during the year. The meetings held at Los Angeles were for examinations only, and were adjourned to San Francisco a few days later, when the work of the committees and the examination papers were submitted to the whole Board for final action.

The time consumed for examinations is usually four days. The subjects on which the candidates are examined are: Chemistry, materia medica, pharmacy (theoretical), pharmacy (practical), toxicology, the identification of drugs and chemicals, and finally an oral examination on all the above subjects.

Educational Requirements: The candidates for examination as "Licentiate" or "Assistant" are required to present evidence of having completed the grammar course in the public schools of this State, or certificates of equal value; otherwise they are examined in reading, writing, spelling, arithmetic, geography, and composition. Candidates who fail in the preliminary examination are not allowed to take the regular examination of the Board.

The practical examination is a test of the candidate's familarity with the work of the pharmacy. He is required to compound prescriptions; to make preparations; he must know how to convert metric weights into the apothecaries' and avoirdupois weights; also, how to convert the metric measures of length and capacity into American measures; must be able to apply the rules for taking specific gravities of solids and

liquids; know how to detect sugar, albumen, etc., in urine, and generally have a knowledge of all the subjects which are of daily application in a pharmacy.

In administering the law the Board have had in mind the purpose for which it was framed and enacted: the protection of the public from incompetent pharmacists and assistant pharmacists, and accordingly have so conducted the examinations as to eliminate only those persons concerning whose lack of fitness they were fully assured. They recognized that when the law first went into effect there were persons engaged in pharmacy whose early advantages had been limited, and who were doing the best they could under unfavorable circumstances, and whose claim for some consideration seemed admissible. But now that the law has been seven years in operation, there is no reason why candidates presenting themselves for examination should not meet all the requirements contemplated by the law. It is a matter of surprise to every one who knows the facts that after all these years young men come up for examination who lack the ordinary education provided in our grammar schools. The Board have felt that persons lacking in general intelligence, or unfamiliar with the ordinary rules of arithmetic, were not safe to be intrusted with the care of pharmacies. In order, therefore, to stimulate such individuals to properly qualify themselves in these matters, they passed a resolution which was published in the drug journals and disseminated by written notices among those engaged in drug stores, stating that from the date given all persons would be required to present evidence of having completed their grammar school course, and in the absence of such certificate, to submit to an examination in the subjects taught in the grammar grades of our public schools. Notwithstanding this notification, young men have come before the Board without having taken the pains to meet these very reasonable requirements. The Board feel that in fixing this minimum grade of education, they have been as lenient as it was possible for them to be with due regard to the responsibilities to be assumed by the candidates. The examinations frequently reveal a dangerous inability to make correct calculations in prescription and other pharmaceutical as well as chemical work. So that, while the Board dislike greatly to be compelled to conduct examinations in elementary education, they feel compelled to do it for the reasons above given.

The examinations in chemistry, materia medica, toxicology, and pharmacy have been made somewhat more stringent than they were four or five years ago, for two reasons—first, because ample notice has been given to all parties interested that these examinations are now required by law; and secondly, because the advanced condition of pharmacy demands an increased extent of knowledge of all the subjects that go to make up a pharmaceutical education. Physicians rely

more than formerly on the competency of pharmacists, and hence give less explicit directions, knowing that the pharmacist is usually better informed on matters pertaining to pharmacy than they are themselves. New remedies are being introduced in great numbers, the names of which are in some cases strikingly similar, while the properties are wholly dissimilar. Some cases of poisoning have occurred from the ignorance of pharmacists on this point, and the Board feel that it is their province to protect the public as far as possible from such casualties. The complaint that is sometimes made in regard to the severity of the examinations is therefore without just foundation. Such criticism only comes from incompetent persons, or those whose financial interests are bound up with them.

Original registrations during the year have been as follows:

45 Graduates.
6 Licentiates without examination.
4 Assistants without examination.
42 Licentiates by examination.
23 Assistants by examination.
13 Assistants granted registration on their Licentiate examination.
101 Persons were examined for "Licentiate," of whom 59 failed.
47 Persons were examined for "Assistant," of whom 24 failed.

The attention of the Board having been drawn to the fact that the managers of several public institutions, hospitals, and dispensaries employed dispensers of medicine who were not legally qualified as pharmacists, the following circular was sent to all such institutions, and to the Board of Supervisors of every county in California:

OFFICE OF CALIFORNIA STATE BOARD OF PHARMACY,
400 Sutter Street, San Francisco, May 1, 1898.

To ——— ———

GENTLEMEN: All persons employed in dispensing medicines in this State must be registered under the provisions of the Pharmacy Law (approved March 11th, 1891). The law applies to all hospitals, dispensaries, and clinics, whether State, county, city, corporate, or private.

Employers, as well as employés, are liable to arrest and fine or imprisonment for violation of the law.

The Pharmacy Act provides that it is unlawful for any person to conduct a pharmacy for dispensing or compounding medicines in this State, unless such person is a Registered Pharmacist.

Any person in order to be a Registered Pharmacist must be a Graduate in Pharmacy, a Licentiate in Pharmacy, or a Practicing Pharmacist.

Graduates are persons who have had four years' experience, and have obtained a diploma from a legally constituted college of pharmacy.

Licentiates are persons who have had four years' experience, and have passed an examination before this Board, or who have presented satisfactory credentials.

Practicing Pharmacists are persons who were in business as druggists at the time of the passage of the Act of 1891, who registered within the prescribed time, and have renewed their registration from year to year until the present date.

Registered Assistants are persons who are registered as such and are employed by Registered Pharmacists. No unregistered persons can dispense or compound medicines or prescriptions, except under the immediate supervision of registered persons.

No Registered Assistant can conduct a pharmacy, or be granted a certificate as Registered Pharmacist, until he has passed the examination for Licentiate in Pharmacy.

You will, therefore, require all your employés who are engaged in dispensing medicines to comply with the law.

W. M. SEARBY,
President.
JOHN CALVERT,
Secretary.

Many persons have violated the pharmacy law through ignorance. These are, mostly, general dealers. As a rule, the druggists throughout the State comply with the provisions of the law. Difficulties have been met with in applying the statute to offenders, partly through the unwillingness of juries to convict decent men for what they perhaps consider a venial offense. A case of this kind occurred at Santa Rosa, where a man who knew the law was illegally engaged in conducting a pharmacy and escaped punishment through the connivance of a Registered Pharmacist. The latter has withdrawn his support, and the offender has been obliged to abandon the business.

Another flagrant case is that of a woman in San Francisco, who is carrying on the drug business under the protection of a Registered Pharmacist. This woman dispenses medicines in the absence of a registered person, but escaped conviction, as the Judge of the Police Court decided that the evidence was not sufficient, even when two witnesses testified that they saw her dispense a prescription when she alone was in charge of the pharmacy.

Generally speaking, however, a visit from a member of the Board or Secretary results in the unregistered druggist's engaging a qualified pharmacist to do the technical work.

In order to secure a prompt compliance with the law regarding re-registration, the following notice was mailed to every person on the register.

OFFICE OF CALIFORNIA STATE BOARD OF PHARMACY,
400 Sutter Street, San Francisco, May 1, 1898.

To the Pharmacists of California:

ANNUAL RE-REGISTRATION.

"Every Registered Pharmacist who desires to continue the practice of his profession in this State, shall annually, on such date as the Board of Pharmacy may determine, pay to the Secretary of such Board a registration fee, to be fixed by the Board; but which in no case shall exceed the sum of two dollars per annum, for which he shall receive a renewal of said registration. Every Registered Assistant Pharmacist who desires to continue the practice of his profession in this State, shall annually, on such date as the Board of Pharmacy may determine, pay to the Secretary of said Board a registration fee, to be fixed by the Board; but which shall in no case exceed the sum of one dollar per annum, for which he shall receive a renewal of said registration." (Pharmacy Law 1891, Sec. 6.)

At a meeting of the California State Board of Pharmacy, held April 13, 1898, a resolution was passed in accordance with the above, that all Registered Pharmacists and

Registered Assistant Pharmacists in this State shall re-register between the *5th day of May, 1898*, and the *5th day of July, 1898*, and all certificates of re-registration shall expire on the 5th day of May, 1899.

The fee for re-registration of Registered Pharmacists for the year ending May 5, 1899, was fixed at the sum of $2, and for the re-registration of Assistant Pharmacists at $1, except that in cases of persons registered since January 1, 1898, the fee was fixed for the remainder of the fiscal year at the sum of $1 for all Registered Pharmacists, and 50 cents for Registered Assistant Pharmacists.

Pharmacists are urgently requested to attend to the matter of re-registration without delay.

JOHN CALVERT,
Secretary.

JOHN CALVERT, Secretary, *400 Sutter St., San Francisco:*

Inclosed find $——— for renewal of certificate No.———, for year commencing May 5, 1898, and ending May 5, 1899.

(Name of Pharmacist:)_____

(Name of Assistant:)_____

(City or Town:)_____

(Street and Number:)_____

Pharmacists will confer a favor on the Secretary by sending names of all Assistants employed by them.

Although the fees for re-registration are due and payable between the 5th day of May and the 5th day of July, a large number of Pharmacists and Assistants neglected to have their registration renewed according to law. Therefore, a postal card was addressed to delinquents, as follows:

CALIFORNIA STATE BOARD OF PHARMACY,
400 Sutter Street, San Francisco, October 1, 1898.

Your attention is respectfully called to the fact that your annual registration fee for 1898-99 was due on the 5th day of last May, and has not yet been paid.

The fee for re-registration of Pharmacists is $2, and for Assistants $1. All registrations will expire May 5, 1899.

A new list of Registered Pharmacists and Assistants is now being prepared, and will be published with the report of the Board. Your name will not appear in this list unless the fee has been paid.

JOHN CALVERT,
Secretary.

In cases of persons registered for the first time since January 1, 1898, the fee *for the remainder of the fiscal year* is only $1 for Pharmacists, and 50 cents for Assistants.

Respectfully submitted.

W. M. SEARBY,
President.
SAM. L. WALLER, Ph.G.
C. ALBERT SEIFERT, Ph.G.
S. OBERDEENER, Ph.G.
E. A. BAER.
H. M. SALE.

REGISTERED PHARMACISTS AND ASSISTANT PHARMACISTS.

(Registered to May 5, 1899.)

Abbreviations: G., Graduate; L., Licentiate; P., Practicing Pharmacist; A., Assistant.

Abbey, C. C. G.
Abel, W. H. P.
Abraham, C. J. G
Abercrombie, L. L. L.
Ackerman, F. S. P.
Adair, W. H. G.
Adams, A. L. P.
Agee, C. W. P.
Agnew, E. A. L.
Aitken, L. S. G.
Akey, W. B. A.
Akey, J. V. P.
Alford, W. B. P.
Alexander, J. F. L.
Allen, W. P.
Allen, C. C. H. A.
Allen, Mrs. N. S. P.
Allen, G. S. P.
Allen, T. G.
Anderson, J. R. L.
Anderson, C. L.
Anderson, C. E. L.
Aplin, W. D. P.
Armstrong, C. W. P.
Armstrong, Mrs. N. A. A.
Armstrong, M. P.
Armour, E. E. P.
Armour, C. L. P.
Armistead, J. H. P.
Armistead, H. V. P.
Arnheim, J. S. P.
Ashim, B. J. P.
Attwood, G. C. A.
Atkinson, F. J. G.
Averill, M. B. P.
Avery, C. W. L.

Baer, E. A. P.
Baer, F. V. L.
Bacmeister, F. C. A.
Bacon, T. F. P.
Bacon, F. R. L.
Baalmann, P. H. G. A.
Bahney, L. W. L.
Baker, E. H. P.
Baker, E. E. A.
Baker, O. D. P.
Bailey, C. C. A.
Baldridge, C. W. L.
Baldridge, W. H. P.
Baldwin, E. H. A.
Baldwin, E. L. A.
Banks, W. C. L.
Barnfield, T. H. A.
Barnickel, A. P.
Barnickel, B. L.
Barber, D. L. A.
Barber, R. D. P.
Barritt, P. W. L.
Bates, C. W. P.
Bates, C. B. P.
Baxley, G. W. P.
Baxter, H. W. P.
Baxter, C. V. A.
Baumeister, E. E. G.
Bassin, J. P.
Bayly, C. A. P.
Bayly, F. L. A.
Bayly, C. A. Jr. L.
Baum, H. R. L.
Bedford, A. D. P.
Bean, C. E. P.
Beaizley, G. T. G.
Becker, F. C. G.
Beckett, F. A. G.
Bellan, M. J. P.
Bellan, J. H. A.
Bell, R. E. P.
Bennett, L. McG. P.
Bennett, R. W. A.
Bennett, W. C. P.
Bennetts; R. J. A.
Benzinger, R. L.
Bertholf, C. F. P.
Bergmann, F. G. A. H. A.
Besby, J. A. W. A.
Berger, C. G. L.
Bernheim, M. R. G.
Berg, W. M. L.
Billings, R. F. P.
Binder, F. P.
Bixby, C. A. L.
Bley, A. A. W. P.
Blake, T. F. P.
Blair, J. D. P.
Blood, H. H. A.
Blaisdell, D. M. A.
Blaisdell, W. L.
Black, C. A. P.
Blankinship, F. G.
Bocca, W. A. L.
Bodle, F. S. P.
Bohmansson, R. H. L.
Bohn, C. H. G.
Bowen, D. M. G.
Boscher, E. H. P.
Boulton, E. A. L.
Booth, A. R. P.
Booth, J. G. L.
Boyken, J. W. P.
Boyd, L. P.
Boyson, J. H. P.
Boswell, F. M. G.
Borthwick, R. W. L.
Bothwell, S. F. L.
Bowman, W. J. P.
Bowman, R. H. L.
Bowman, J. P. A.
Braddock, O. L. L.
Bradley, J. W. A.
Bramhall, W. M. G.
Brannagan, A. J. A.
Brandsch, F. L.
Brayton, H. W. Jr. A.
Brewer, T. R. P.
Bristol, H. R. P.
Bridgman, R. W. A.
Bridgewater, E. G.
Brink, C. M. A.
Brinkman, P. A.
Briggs, A. E. G.
Briggs, W. D. A.
Brooks, H. C. P.
Brooks, W. A. A.
Broemmel, J. G. B. P.
Brow, F. E. A.
Brown, P. A. A.
Brown, T. W. Jr. P.
Brown, M. W. P.
Brown, S. M. A.
Brown, J. H. G.
Brown, T. V. L.
Brownridge, P. F. P.
Bronson, B. O. L.
Bronson, W. D. L.
Brouwer, A. L.
Brownlee, W. S. A.
Bryan, W. J. P.
Buker, H. O. P.
Burns, M. W. P.
Burns, G. A. A.
Butler, P. H. P.
Butler, H. M. A.
Butler, J. L. A.
Butler, J. P.
Butler, W. L. P.
Butler, W. H. G.
Bush, I. C. P.
Burbeck, H. A. P.
Burnett, G. W. P.
Burnham, W. P. A.
Burnham, F. P. A.
Burnham, J. H. P.
Burks, W. T. A.
Butsch, E. E. L.
Byler, C. M. L.
Byrne, S. A. L.

REGISTERED PHARMACISTS AND ASSISTANT PHARMACISTS—Continued.

Caldwell, B. P.
Caldwell, S. P.
Callisch, L. P.
Callender, J. A. P.
Calvert, J. G.
Callahan, J. R. A.
Caldee, J. W. A.
Campbell, J. W. P.
Campbell, W. W. P.
Campbell, J. B. A.
Cannan, D. P.
Campini, V. J. A.
Cannon, G. A.
Carman, W. P. P.
Carson, N. R. P.
Carr, L. T. A.
Carr, J. E. P.
Carr, T. H. P.
Caroway, P. C. P.
Casselman, J. M. G.
Case, C. A. P.
Cauch, R. A.
Catlett, B. F. L.
Castle, E. S. A.
Cauch, J. R. G.
Cavagnaro, A. A. G.
Chard, G. R. G.
Chapman, F. J. P.
Chase, C. A. P.
Chambers, G. H. P.
Chaigneau, K. R. L.
Cherry, E. M. A.
Chestnut, C. S. L.
Chilson, H. G. G.
Churchill, J. P.
Churchill, J. P. G.
Churchill, F. C. L.
Chistman, W. A.
Christopher, J. F. G.
Clapp, G. H. P.
Clapp, C. F. A.
Clapsaddle, P. A. A.
Clark, A. C. L.
Clark, H. L. A.
Clark, R. A.
Clark, S. H. P.
Clarke, F. A.
Clayes, S. R. P.
Clayes, W. I. G.
Claypool, J. W. A.
Clifford, J. P.
Clough, F. G.
Clipfel, J. C. P.
Clinton, C. A. P.
Coffin, R. W. P.
Cody, N. L. A. G.
Cohn, I. A.
Cole, W. K. P.
Colson, W. C. P.
Collette, L. P. P.
Collins, R. E. P.
Collins, R. S. G.
Collins W. H. G.
Colpe, C. H. L.
Combs, H. W. P.
Cook, J. P.
Cook, H. C. L.
Cooper, C. J. A.
Copeland, A. C. P.
Corbin, L. E. L.
Cover, C. A. A.
Costa, A. J. P.
Costello, N. J. A.

Cozens, T. W. P.
Cozens, C. B. P.
Cox, L. H. G.
Cox, H. C. A.
Condon, C. E. A.
Cottle, H. S. G.
Cockburn, E. A. L.
Crackbon, L. S. P.
Crane, L. T. P.
Crane, W. P. A.
Crane, C. W. A.
Crews, B. F. P.
Craker, R. J. A.
Crilley, W. M. A.
Crowley, J. J. A.
Cross, W. S. P.
Cross, H. H. P.
Cross, K. H. A.
Cunnane, J. B. P.
Culver, L. A. A.
Culver, F. G. L.
Cutler, G. A. P.
Cutler, F. D. A.
Curless, G. W. P.
Curless, W. P. P.
Cutter, E. A. P.
Curtis, M. B. G.

Daggett, H. P.
Darrough, C. H. P.
Davis, J. F. A.
Davis, E. P. P.
Davis, M. P.
Davis, H. S. A.
Davis, J. W. P.
Davis, W. K. P.
Dawson, J. H. G.
Dawson, R. A.
Day, O. G. P.
Day, H. J. A.
Day, R. L. P.
Day, T. J. L.
Dean, J. B. P.
Dean, H. L.
Dean, J. C. A.
De Cray, F. A. A.
D'Artenay, E. G.
Deakin, J. W. L.
Dennis, J. P.
Dennis, W. A.
Dennis, J. D. P.
Denison, R. O. L.
Devine, John G.
Devine, James P.
De Turk, W. S. A.
De Witt, T. B. P.
De Voin, S. F. P.
Deville, E. G.
Derge, P. A. G.
Derick, R. A. A.
Diggles, A. M. A.
Diggles, J. A. P.
Dickinson, C. F. A.
Dickinson, F. S. P.
Dickhoff, B. S. L.
Dillon, J. F. P.
Dickson, E. T. P.
Di Nola, L. P.
Dibert, A. J. G.
Dodge, M. H. P.
Dodel, H. L.
Dolley, L. P.
Dollinger, C. F. L.

Downes, C. S. P.
Downes, E. A.
Doyle, B. B. P.
Dowdall, R. E. L.
Dore, C. W. G.
Dougherty, W. A. L.
Dougherty, J. G. G.
Drury, J. S. P.
Drewitz, A. C. P.
Drossel, J. H. G.
Driver, J. W. P.
Driscoll, F. I. G.
Driscoll, F. A. G.
Drost, J. D. L.
Drake, F. N. L.
Dugan, H. F. P.
Duff, M. F. P.
Dubois, P. A. P.
Dunlap, J. R. P.
Dupré, A. F. P.
Dupré, A. E. G.
Dunigan, M. W. A.
Dwyer, J. P.

Eaton, J. P. A.
Eberlin, E. P.
Eberhard, C. E. A.
Eckhardt, E. W. L.
Edmiston, N. C. P.
Edelmann, G. L. G.
Eitel, J. M. F. A.
Ekstein, A. P.
Ekman, A. P.
Elder, H. P. G.
Ellis, L. T. P.
Elmore, R. H. P.
Elmore, A. J. P.
Elmore A. B. P.
Elbe, C. B. P.
Eldredge, F. R. A.
Elwood, F. B. P.
Elstun, J. W. A.
Ellington, A. W. G.
Endicott, R. H. P.
Endicott, E. M. A.
Enriquez, M. A.
Engelhardt, A. E. P.
Englander, S. A.
Englund, W. A.
Enos, J. P. L.
Eschmann, C. L. G.
Evans, A. P.
Evans, E. E. G.
Evans, C. A.
Evers, C. A.
Ewing, J. E. L.
Exton, E. C. L.

Fairbanks, H. P.
Fairbanks, C. D. G.
Fallin, H. C. P.
Fairchild, W. F. P.
Falck, F. L.
Farley, W. H. L.
Fasig, H. B. P.
Fatton, L. A.
Fay, H. P.
Fauda, C. L.
Ferré, A. E. L.
Ferré, M. L.
Felt, G. A.
Fearn, J. R. A.
Fearn, J. P.

REGISTERED PHARMACISTS AND ASSISTANT PHARMACISTS—Continued.

Ferrier, J. P. G.
Ferris, A. M. P.
Ferris, C. I. P.
Fellows, M. E. A.
Ferguson, J. P. A.
Ferguson, E. M. A.
Figueiredo, V. L. A.
Fife, C. C. P.
Fisher, E. C. P.
Fischer, C. W. P.
Fletcher, D. M. G.
Fletcher, E. L. A.
Flatow, P. P.
Fleming, J. R. A.
Flint, J. H. G.
Flint, T. J. P.
Flint, G. B. P.
Foley, R. E. P.
Folks, J. M. A.
Foster, H. J. P.
Forster, W. M. L.
Forester, G. W. G.
Ford, H. D. P.
Forbes, F. H. A.
Fouch, J. F. P.
Fox, A. S. G.
Franklin, S. A.
Fratis, J. C. A.
Freeman, G. H. P.
Freeman, J. J. L.
Friend, E. A.
Fritz, J. P.
Fryer, C. P.
Friedhofer, W. F. P.
Fuller, C. F. P.
Furnald, F. H. L.
Fulkerson, A. M. L.

Gallwey, J. A. P.
Gardner, W. P.
Gardner, F. A. G.
Garrison, J. G. P.
Garrison, J. A. A.
Garrett, J. R. P.
Garner, W. L.
Gates, J. R. P.
Gates, A. L. A.
Gates, J. H. P.
Gates, E. P. G.
Gatliff, W. W. P.
Gay, C. L. A.
Geary, W. P.
Gelinas, L. G. A.
Gearn, G. C. L.
Gey, B. E. L.
Gerdes, H. G. G.
Gerard, G. F. L.
George, C. H. A.
Ghiglieri, G. A.
Giese, F. J. P.
Gibson, W. M. L.
Gibson, J. T. A.
Gillis, W. T. P.
Gilliland, H. F. A.
Glines, H. A. P.
Gloria, J. J. L.
Gleason, T. F. A.
Goble, L. E. P.
Gogings, S. I. P.
Goldner, A. P.
Goldaracena, O. M. P.
Goodman, L. G.
Gove, D. M. P.
Gray, N. G.
Gray, W. M. L.
Gray, J. A.
Graham, T. D. G.
Graham, R. L. P.
Graves, G. W. P.
Green, R. M. P.
Green, W. W. P.
Green, F. T. L.
Green, M. P. L.
Green, G. A. G.
Green, D. B. L.
Greenberg, N. G. W. P.
Greenleaf, T. A. P.
Gregory, E. B. P.
Gregory, J. R. P.
Grey, F. S. L.
Grenell, H. A.
Grellman, C. A.
Greenwood, E. N. A.
Grimes, F. A. P.
Grimes, W. V. L.
Gretter, W. C. G.
Griffing, E. B. L.
Grover, S. A. A.
Groton, J. L. P.
Groton, W. D. P.
Grunig, F. W. A.
Gutierrez, B. P.
Gutierrez, A. G. L.
Guirado, R. C. P.
Gunn, S. A.
Gydison, C. T. L. G.

Hafner, E. C. A.
Hainline, C. G. P.
Haigh, W. R. A.
Haight, L. M. L.
Hakes, C. D. G.
Halsell, O. L. G.
Hall, C. L. P.
Hall, B. F. G.
Hall, L. D. A.
Hall, W. R. A.
Hall, C. E. L.
Haman, H. G.
Hammit, C. H. G.
Hammer, M. S. P.
Hammond, C. E. P.
Hammack, G. W. A.
Hamlin, B. P.
Hamlin, W. C. A.
Hance, C. H. P.
Hanby, P. N. A.
Hanson, E. W. G.
Hardy, L. E. L.
Harding, J. H. P.
Hardman, J. C. P.
Hartsough, C. W. Jr. P.
Harper, S. A. L.
Harmon, W. H. G.
Harrington, M. T. Jr. A.
Harris, J. M. P.
Harris, M. U. A.
Harris, L. G.
Hassler, A. J. P.
Hastings, B. P.
Hatch, W. M. A.
Hawkins, G. W. G.
Hawthorne, A. L.
Hauman, A. L.
Hazen, E. A. G.
Heath, F. M. P.
Heath, J. H. P.
Hedrick, W. M. G.
Hedges, F. M. G.
Hefton, W. M. L.
Helke, W. L. G.
Heinzeman, C. F. L.
Heinzeman, C. F. Jr. A.
Heinzeman, E. A. G.
Henry, E. C. G.
Henderson, W. McD. P.
Henderson, E. A. A.
Hesemeyer, F. W. P.
Herbert, J. P. A.
Herzer, G. A. P.
Hemenover, A. A.
Herriott, D. L.
Herbing, P. L.
Higgins, W. M. P.
Hicks, W. T. L.
Higby, E. P. G.
Hickman, W. M. A.
Hilby, F. M. P.
Hill, C. E. A.
Hill, W. S. P.
Hill, E. L. A.
Hill, E. E. L.
Hills, A. P. A.
Himmelsbach, W. L.
Hitchcock, F. N. L.
Hoffman, W. A. P.
Hogg, A. H. A.
Holden, I. D. P.
Hohlweg, F. P.
Holladay, E. P.
Holman, C. F. L.
Hopkins, V. W. G.
Hopkins, T. P. P.
Hooker, B. A. A.
Hoover, D. L. A.
Hoover, U. G. G.
Horne, W. A. P.
Horne, M. L.
Hornung, E. B. A.
Horsnyder, J. H. P.
Houseworth, E. C. P.
Houghton, T. B. G.
Howe, J. E. P.
Howland, C. S. A.
Howard, F. W. A.
Hueter, G. A. Jr. G.
Hubachek, J. H. P.
Hudgin, E. L. P.
Hubbard, G. M. P.
Hubbard, F. M. P.
Hulting, F. B. G.
Huff, L. J. L.
Hull, D. E. L.
Hund, G. B. G.
Huntington, H. L. P.
Hunter, F. A. L.
Huntoon, J. H. A.
Husband, J. W. P.
Hurzig, W. F. N. G.
Hutchinson, C. S. A.
Huxtable, E. J. G.
Hyacinth, M. A.
Hyer, A. F. L.

Ing, J. C. G.
Ingram, H. P.
Ingram, W. P.
Ingram, J. C. L.
Ingram, W. D. L.

REGISTERED PHARMACISTS AND ASSISTANT PHARMACISTS—Continued.

Ingram, C. H. L.
Inman, P. C. G.
Irwin, G. B. A.
Isaacson, J. L.

Jackson, F. F. P.
Jackson, F. A. A.
Jackson, E. H. G.
Jacobs, L. C. A.
Janney, R. L. L.
January, J. J. P.
Jerman, T. P.
Jesson, J. L.
Jeffrey, F. D. G.
Jochumsen, P. F. A.
Jones, J. T. P.
Jones, T. H. P.
Jones, F. E. P.
Jones, H. C. P.
Jones, P. E. A.
Jones, A. S. G.
Jones, H. F. G.
Johnson, E. T. G.
Johnson, W. P. G.
Johnson, S. F. P.
Johnson, D. E. P.
Johnson, C. R. P.
Johnson, H. M. P.
Johnson, E. F. G.
Johnson, D. D. A.
Johnston, W. M. A.
Johnston, W. S. G.
Johnston, E. E. L.
Johnstone, A. E. A.
Jordan, H. J. P.
Jörgensen, E. B. G.
Joseph, C. D. L.
Juenger, W. H. P.

Kabisius, W. L.
Kalliwoda, H. L.
Kearny, W. B. L.
Keller, F. W. P.
Keller, G. P. L.
Keller, C. F., Jr. L.
Kelly, F. J. P.
Kelly, W. A. A.
Kelly, F. S. P.
Kelly, F. I. L.
Kellogg, H. D. P.
Kennedy, M. A. L.
Kerr, R. H. A.
Kerrich, J. H. P.
Kergan, H. S. L.
Kibbler, W. T. P.
Kibler, N. W. A.
Kidder, L. A. A.
Kieferdorf, F. F. A.
Kilburn, C. M. P.
Kilburn, H. B. P.
Kimball, W. S. P.
King, W. H. V. A.
King, J. C. G.
Kinney, L. C. P.
Kirby, C. M. A.
Kirby, A. P.
Kirk, W. B. A.
Kirk, J. P.
Kirk, H. S. P.
Kirkham, W. A. G.
Kirkland, D. W. L.
Kleine, C. W. L.
Knapp, C. R. L.
Knickerbocker, L. M. G.
Knott, G. R. P.
Knotwell, J. P.
Knox, R. J. P.
Knox, C. D. P.
Koehler, P. L.
Kolliker, F. P.
Kosby, A. E. P.
Koser, N. A. P.
Krakan, W. E. Von L.
Kratzenstein, C. C. L.
Krough, P. P. P.
Kruell, F. J. G.
Kruell, A. E. G.
Krug, A. P.
Kohlmann, C. P.
Kurtz, A. M. G.
Kyle, R. T. G.

La Boyteaux, C. H. P.
Lacey, D. S. L.
Ladd, H. L. G.
Laist, O. Jr. G.
Laisy, E. G. G.
Lamb, J. A. P.
Lang, A. L.
Langdon, F. S. L.
Larkin, J. T. A.
Lasch, J. J. P.
Lasley, C. C. P.
Latimer, B. G. P.
Lauck, G. A. A.
Lawrence, G. W. L.
Lawrence, A. L.
Lawson, W. H. P.
Laughlin, B. E. P.
Laughlin, J. B. P.
Laux, C. P.
Larimer, W. J. G.
Lassen, H. C. A.
Lawless, E. J. A.
Lapidere, H. A.
Large, C. F. L.
Leavell, A. A.
Lee, L. R. P.
Leeman, L. E. P.
Leber, A. L. G.
Leffler, O. W. A.
Leithold, J. V. G.
Leitch, J. C. A.
Leithead, W. W. L.
Lengfeld, A. L. L.
Lengfeld, J. L. L.
Lernhart, A. G.
Levi, I. B. A.
Levinson, J. P.
Levy, E. G. L.
Lewis, W. B. L.
Lewis, C. H. L.
Lewis, R. G. A.
L'hote, E. A.
Lichthardt, G. H. P. G.
Lichterman, W. L.
Lichterman, J. L.
Lindsley, A. W. P.
Lindsley, Josephine C. A.
Lindsay, J. C. P.
Lippen, H. G.
Liscomb, A. H. L.
Loehr, G. W. P.
Lomelino, A. C. P.
Lomelino, J. W. P.
Lonergan, J. J. P.
Long, E. P.
Longenecker, G. H. P.
Lopizich, J. P.
Loring, E. B. L.
Loutzenheiser, J. G. P.
Loutzenheiser, W. H. A.
Loutzenheiser, W. P.
Lovejoy, J. H. P.
Lubosch, M. E. A.
Lutz, W. G.
Lynch, O. J. L.
Lyon, J. A. G.

Mack, F. H. A.
Maclise, J. G.
Macgibbon, E. E. P.
Macy, C. F. P.
Macdonald, J. S. A.
MacIver, D. B. P.
MacLeod, J. A. L.
Madden, W. A. A.
Magee, E. E. L.
Maggard, W. F. P.
Maguire, W. A. A.
Mahoney, J. J. P.
Malone, T. S. L.
Mangels, W. F. A.
Mandersheid, C. P.
Mandersheid, O. A.
Manning, J. M. P.
Martin, J. P.
Martin, C. B. G.
Martin, W. H. A.
Martin, R. S. G.
Martin, E. M. A.
Marett, H. G.
Markell, R. S. P.
Marsh, G. W. P.
Marsh, A. L. A.
Marquis, W. P.
Mason, D. E. P.
Mathews, J. R. P.
Mathis, C. H. P.
Matsumaru, G. A.
Matscheck, F. L. A.
Maxwell, W. A. P.
May, J. A. P.
Mayer, P. F. A.
Mayer, B. P.
Mayer, E. G.
Mayhew, W. E. P.
Meddaugh, O. E. P.
Melvin, H. A. A.
Melvin, W. P. P.
Mentz, C. H. P.
Mentor, M. P.
Merchant, W. T. P.
Metcalf, H. F. L.
Mervy, A. J. P.
Miller, B. F. P.
Miller, J. M. P.
Miller, N. N. L.
Miller, H. A. F. P.
Miller, L. P.
Miller, Guy L.
Miller, S. Jr. L.
Millard, F. R. P.
Mills, A. J. A.
Mitchell, J. H. P.
Mitchell, J. S. P.
Mitchell, Victoria A.
Mixter, F. W. L.
Monroe, G. H. P.

REGISTERED PHARMACISTS AND ASSISTANT PHARMACISTS—Continued.

Monroe, W. R. G.
Montague, J. W. A.
Moloney, E. J. A.
Moeszinger, P. P. G.
Moody, R. F. P.
Moody, A. R. L.
Monckton, A. L.
Moore, F. E. P.
Moore, E. P.
Moore, W. I. L.
Moore, P. L. L.
Moore, H. C. A.
Morgan, J. E. A.
Morgan, C. L. G.
Morehead, G. A. P.
Morehead, G. G. L.
Morey, C. E. P.
Morriss, C. A.
Morrison, F. T. G.
Morrison, H. C. L.
Morse, L. G. P.
Morse, C. M. P.
Mouron, A. P.
Munroe, L. F. A.
Mueller, C. A. G.
Müller, W. M. A.
Murphy, L. D. P.
Myer, G. W. A.
Myer, F. E. L.
McAuliffe, T. W. A.
McBride, E. J. P.
McBride, G. A.
McBoyle, A. P.
McCoy, M. A. P.
McConnell, M. P.
McComas, H. P.
McCullough, F. E. P.
McCartney, W. S. P.
McCarty, T. B. P.
McCarty, F. J. T. L.
McCurry, L. W. P.
McCue, E. J. A.
McDonnell, S. A. G.
McDonnell, J. J. A.
McGibbon, E. J. A.
McGuire, T. P.
McHaffie, J. H. L.
McKean, W. G. P.
McKean, W. P. P.
McKee, J. A.
McKee, J. A. P.
McKee, B. E. A.
McKenney, C. S. L.
McKie, J. H. G.
McKim, G. W. L.
McKown, J. O. P.
McLeod, C. W. A.
McLaughlin, J. B. P.
McLaughlin, J. G. L.
McMaster, A. D. L.
McMurry, M. P.
McNair, J. S. G.
McNulty, C. R. G.
McPhee, R. G. A.
McQuiddy, R. D. A.

Nash, B. G.
Nadeau, A. T. A.
Neal, H. P.
Neal, R. L. A.
Neal, C. W. G.
Neblett, W. E. G.
Nelson, A. V. L.
Newby, T. S. G.
Newman, C. C. P.
Newman, R. J. L.
Newlon, H. M. L.
Newton, J. C. L.
Nichols, W. V. L.
Nicholson, E. J. H. P.
Nielsen, A. P. L.
Noe, G. T. G.
Noe, M. E. A.
Noe, E. H. A.
Norton, L. E. P.
North, D. B. L.
North, E. H. L.
Noyes, C. F. P.
Noble, C. H. P.
Noble, E. P.
Norman, R. A. A.
Noonan, G. E. A.
Norris, W. E. A.

Oberdeener, G. G.
Oberdeener, S. G.
O'Connor, D. L. P.
O'Callaghan, J. S. P.
O'Connell, F. P.
Oesting, P. P.
Off, J. W. A. P.
Off, P. T. L.
O'Farrell, F. L.
Olsen, A. L.
Oreña, A. G. G.
Osgood, H. L. P.
Osgood, F. S. P.
Osgood, W. G. A.
Osuña, L. A.
Otstot, B. A.
Ott, F. S. L.
Ott, H. G. A.
Otto, W. H. L.
Overholt, C. A.
Owen, F. D. L.

Packard, C. O. P.
Packscher, M. G. A.
Palmer, S. A. P.
Paquin, F. G.
Park, H. L. G.
Parke, E. T. P.
Parke, O. H. A.
Parker, G. W. P.
Parker, W. S. L.
Parr, W. W. P.
Parrish, H. P.
Parrett, W. E. A.
Parry, I. M. L.
Patterson, J. A. P.
Patterson, W. A. P.
Patterson, F. A. A.
Patterson, F. F. G.
Patrick, R. W. A.
Paul, A. A. P.
Pearce, S. W. A.
Pearlman, S. M. A.
Pearson, S. J. P.
Peiffer, W. C. G.
Pellerano, N. A. L.
Pendleton, E. O. G.
Perkins, E. W. P.
Perrin, T. C. P.
Perry, P. P. P.
Peters, T. P.
Peters, T. C. A.
Peters, C. J. G.
Phelan, C. E. P.
Phelan, M. A.
Phillips, T. F. P.
Phillips, M. P.
Pierce, L. W. P.
Pierson, W. E. A.
Pixley, W. B. P.
Plummer, E. J. P.
Poage, J. H. A.
Pockman, L. H. P.
Pochner, A. A. G.
Poggi, I. M. P.
Pond, H. P.
Pond, W. R. P.
Pooler, C. B. G.
Powell, R. B. P.
Powell, H. B. A.
Prewett, S. W. G.
Price, T. L.
Pring, W. H. A.
Pring, E. P.
Prindle, E. C. P.
Printz, C. G. L.
Prosser, A. M. P.
Prouty, R. L. A.
Prior, W. A. P.
Purlenky, G. A.
Pye, R. J. P.

Quirin, F. J. L.

Rabenau, A. G. G.
Ramlot, E. L.
Ramsay, E. H. P.
Ramsay, J. G. P.
Randall, C. W. P.
Rankin, C. M. L.
Rapp, W. H. P.
Rasmussen, R. P.
Rawlings, E. E. P.
Ray, D. P.
Redman, J. E. L.
Redfield, J. A. P.
Reeb, T. A.
Reed, J. D. P.
Reedy, R. B. A.
Rees, D. R. G.
Reid, R. P.
Reid, R. L. P.
Reynolds, R. G. P.
Reynolds, H. G. G.
Rhea, A. R. P.
Richards, R. B. L.
Richardson, W. H. P.
Richardson, E. L.
Richter, W. C. A.
Rider, F. P.
Rigg, T. J. L.
Riggs, J. S. P.
Riley, W. C. L.
Riley, C. C. A.
Ring, J. H. P.
Rising, J. B. A.
Ritter, A. A.
Robbins, G. L. P.
Roberts, E. J. A.
Robertson, W. A.
Robinson, J. G. P.
Robinson, O. A.
Robinson, E. C. L.
Robson, H. P. P.
Rock, P. G.

REGISTERED PHARMACISTS AND ASSISTANT PHARMACISTS—Continued.

Rockwell, L. A. P.
Roethe, C. H. P.
Rogers, S. S. P.
Ronaldson, J. A.
Rose, J. B. A.
Rosenberger, S. P.
Rosenberger, W. D. P.
Rosenberger E. S. A.
Ross, G. I. G.
Rossi, D. P. L.
Rothman, M. A.
Rowley, C. H. P.
Rowley, A. R. P.
Royer, C. H. G.
Ruffin D. T. L.
Ruhser, F. W. A.
Ruiz, B. P. A.
Ruiz, L. F. P.
Ruiz, A. M. P.
Rulison, F. C. A.
Runyon, E. W. G.
Rutledge, W. P.
Ryan, D. P.
Ryan, P. A. G.
Ryckman, H. G. A. A.

Sacry, G. A. P.
Saeger, B. L. P.
Sadler, A. L.
Sain, J. H. P.
Sale, H. M. P.
Sale, L. D. P.
Salmon, E. P. A.
Salter, J. W. P.
Sanborn, A. P. P.
Sandelin, F. P.
Sanford, J. A. L.
Sangster, J. E. L.
Sargent, J. S. P.
Saunders, D. C. P.
Saunders, Z. W. P.
Saxton, W. E. A.
Schetter, E. O. A.
Schlott, D. C. L.
Schmelz, C. J. P.
Schmidt, V. P.
Schmidt, A. O. L.
Schneider, B. P.
Schnitker, J. J. A.
Scholl, A. L. G.
Schultze, P. P.
Schwartz, H. L.
Schwartz, N. A.
Schunhoff, B. F. P.
Schoenheit, A. P.
Schuldt, H. F. G.
Scott, J. F. A.
Scott, A. E. A.
Scott, Mrs. A. E. P.
Searby, W. M. L.
Seay, W. W. L.
Se Brell, J. D. P.
Seifert, C. A. G.
Selzer, M. J. E. G.
Senter, R. P.
Serene, H. A.
Sexton, J. L.
Seyfreid, O. E. A.
Sharp, S. A. L.
Shedden, G. S. A.
Shelton, J. R. P.
Sherman, G. A. P.
Sherwin, E. A. L.
Sherwood, H. M. P.
Shibles, J. N. P.
Shumate, T. E. G.
Silver, T. H. P.
Simmons, W. A. P.
Simmons, E. W. A.
Simmons, L. S. A.
Simmons, H. M. G.
Simpson, W. P.
Skilling, H. H. G.
Skinkle, A. Jr. P.
Skinner, E. E. G.
Skinner, R. W. G.
Smith, A. W. P.
Smith, A. E. H. P.
Smith, G. H. P.
Smith, W. A. P.
Smith, W. H. P.
Smith, A. A. P.
Smith, G. P.
Smith, V. P.
Smith, T. H. P.
Smith, L. P.
Smith, Mrs. V. P. P.
Smith, C. C. P.
Smith, R. H. L.
Smith, H. L. L.
Sneden, M. B. L.
Sollenberger, S. L.
Soule, A. J. P.
Sowell, J. W. P.
Spalding, J. B. P.
Spaeth, G. C. G.
Spieker, J. J. P.
Spivey, T. A. P.
Spoor, W. L. P.
Sporndli, E. L.
Sprecher, G. A. P.
Squires, H. J. G.
Stafford, R. L. A.
Starbuck, W. P.
Starbuck, F. J. P.
Starbuck, A. P.
Starbuck, E. A.
Stark, W. H. A.
Steele, J. G. P.
Stevens, S. M. P.
Stevens, F. S. A.
Stephenson, J. F. A.
Stewart, G. A. A.
Stewart, N. McK. P.
Stewart, M. G. A.
St. John, S. A.
Stinson, C. G. P.
Stocker, J. B. A.
Stocker, W. W. L.
Stone, H. N. L.
Strahlman, E. P.
Strain, W. I. A.
Stratton, J. A. P.
Strong, C. G. P.
Stroud, J. R. P.
Strout, G. E. A.
Sulliger, W. R. H. L.
Sulzberger, T. L. P.
Surbaugh, J. T. P.
Sutherland, G. M. L.
Swart, A. T. P.
Swift, L. F. A.

Taber, W. Z. L.
Taggart, E. P.
Talcott, L. L.
Tallman, T. Y. A.
Tanner, J. G. P.
Tanner, E. S. L.
Tarter, A. P. P.
Taylor, W. N. P.
Taylor, F. B. A.
Taylor, G. A. A.
Terwilliger, C. W. A.
Teubner, C. G.
Thiele, E. H. A.
Thomas, A. B. L.
Thomas, J. W. A.
Thomas, E. C. L.
Thompson, L. H. P.
Thompson, J. E. A.
Thompson, W. B. L.
Thompson, N. S. P.
Thompson, L. Q. P.
Titus, I. S. A.
Tibbitts, L. C. P.
Tjader, C. W. A.
Tobriner, I. G.
Todd, D. B. P.
Tompkins, C. F. G.
Topley, J. P.
Topley, J. H. G.
Topley, W. H. G.
Torello, E. N. P.
Toogood, C. C. A.
Towne, F. M. P.
Trantz, O. G. G.
Trefry, A. A.
Trewartha, S. Jr. P.
Trivett, W. M. A.
Trout, J. H. G.
Trowbridge, H. O. P.
True, A. A. P.
Trull, W. P.
Tufts, A. C. P.
Tuttle, C. K. P.
Turner, G. S. G,
Turner, J. S. A.
Turner, W. P. A.

Upp, W. A. G.

Van Fossen, L. P.
Van Haren, F. E. P.
Van Horn, F. N. P.
Van Sull, A. A.
Van Voorhies, R. J. L.
Vance, J. G. A.
Varga, A. R. A.
Vaughn, J. W. P.
Vinton, W. D. P.
Violé, J. P.
Virden, E. G.
Virden, B. S. A.
Vogel, R. F. G.
Volkmann, M. F. G.
Voluntine, K. P.
Von der Lieth, F. H. P.
Von Luedinghausen, O. A.
Von Werthen, J. G.

Wagener, S. H. P.
Wagner, H. W. L.
Wait, C. E. P.
Wait, G. S. P.
Wait, G. Z. P.
Walden, G. R. P.
Walker, H. W. P.
Walker, C. C. L.

REGISTERED PHARMACISTS AND ASSISTANT PHARMACISTS—Continued.

Walker, W. G. A.
Wall, P. P.
Waller, S. L. G.
Waller, J. L. G.
Waltenspiel, G. A. L.
Walsh, A. D. G.
Wapple, G. P.
Warboys, J. W. P.
Ward, R. M. L.
Warren, J. S. G.
Warren, E. E. P.
Warren, G. R. P.
Waste, J. M. A.
Washburn, C. L. L.
Washburne, M. A. P.
Washington, H. P.
Watkins, F. F. P.
Watson, K. E. A.
Watson, V. B. P.
Watters, A. J. L.
Waugh, H. H. P.
Weaver, C. R. P.
Webster, J. A. P.
Webster, E. E. A.
Webster, M. P.
Wegner, E. P.
Weck, C. E. G.
Webb, H. H. L.
Webb, E. O. A.
Weitman, C. L. P.
Welti, L. A.
Weingartner, E. C. P.
Weyher, W. H. L.
Wells, E. W. P.
Wells, W. P.
Wenger, F. D. A.
Wentworth, C. O. P.
Wentz, G. A. P.
Wessenberg, D. W. P.
Westlake, L. J. G.
Wetmore, G. H. Jr. P.
Wickizer, H. L.
Wight, R. B. P.
Wiggington, J. W. A.
Willis, O. P. P.
Williams, W. R. P.
Williams, L. E. G.
Wilkens, L. A.
Wilkins, F. P.
Wilson, B. F. P.
Wilson, W. L. P.
Wilson, G. O. L.
Wilson, E. C. L.
Wines, W. F. A.
Winter W. H. P.
Winter, J. H. L.
Winter, C. H. G.
Winch, F. C. L.
Wise, T. F. A.
Wishart, W. A. P.
Witter, D. P.
Whipple, J. M. P.
Whitby, E. R. A.
Whitcomb, G. O. A.
White, R. E. P.
White, J. W. P.
White, J. O. P.
White, J. S. A.
White, W. E. A.
Whiting, E. C. G.
Whitlock, J. L. A.
Whitney, W. B. G.
Wood, J. W. G.
Wood, I. N. L.
Woodruff, D. S. P.
Worland, H. C. P.
Worth, T. R. G.
Worthington, W. F. A.
Wolf, M. J. A.
Wolf, F. C. L.
Wolf, E. A. L.
Wolfe, C. H. L.
Wolff, I. P.
Wolff, W. J. L.
Wolff, C. W. L.
Wrede, T. P.
Wrede, T. Jr. A.
Wuensche, C. A.
Wulzen, D. H. Jr. G.
Wynne, H. F. P.

Yardley, H. E. L.
Yarnell, E. T. L.
Yonge, S. G. P.
Young, A. L. L.
Young, J. G.

Zabaldano, A. P.
Zeh, L. P.
Zeile, C. D P.
Zeilin, W. S. P.
Zerr, F. G.
Zipf, J. P. P.
Zumwalt, F. H. L.

REPORT OF THE COMMITTEE

APPOINTED BY THE SENATE

AT THE

THIRTY-SECOND SESSION OF THE LEGISLATURE—1897

TO MAKE AN

Examination of State Institutions

JOHN H. DICKINSON, Chairman.
JOHN J. BOYCE, E. W. CHAPMAN, W. F. PRISK, C. M. SIMPSON,
Committee.



SACRAMENTO:
A. J. JOHNSTON, : : : : : : : SUPERINTENDENT STATE PRINTING.
1899.

REPORT.

SACRAMENTO, February 2, 1899.

To the Senate of the State of California:

The committee appointed by the Senate at its last session by virtue of the following resolution:

Resolved, That Senators Dickinson, Boyce, Prisk, Simpson, and Chapman be and they are hereby appointed and constituted a Committee, and directed to visit and investigate all State institutions, prisons, reformatories, schools, asylums, and other institutions, supported in whole or in part by the State, or receiving assistance therefrom, and they are hereby directed to make careful examination of such institutions, to the end that the manner in which appropriations are expended and the manner in which said institutions are conducted and managed, and to inquire generally into any and all things pertinent to the control, management, and conduct thereof, and of the manner in which moneys received from the State are expended therein, and to report to the Senate at the thirty-third session of the Legislature the result of their examinations and investigations. Said Committee is hereby authorized and empowered to do any and all things necessary to make a full and complete investigation of the matters above mentioned and referred to. Said Committee, and such sub-committees as may be appointed from the members thereof by said Committee, are hereby authorized and empowered to send for persons and papers, and to take all necessary means to procure the attendance of witnesses and the taking of their testimony, and the members of said Committee are, and each of them is, hereby authorized to administer oaths, and that all the provisions of Article VIII, Chapter II, Title I, Part 3, of the Political Code of this State, relative to the attendance and examination of witnesses before the Legislature and committees thereof, shall apply to the Committee appointed under this resolution and to such sub-committees as said Committee may appoint for the purpose of making the examinations and investigations referred to.

Said Committee is hereby authorized to employ a stenographer or stenographers whenever, in their judgment, it shall be necessary, and such stenographer or stenographers shall also be clerk of said Committee.

The Superintendent of State Printing is hereby directed to print such matter as said Committee may require at any time.

Said Committee shall be entitled to and receive, payable out of the contingent fund of the Senate, such sum or sums as may be necessary to defray their necessary traveling expenses incidental to such examinations and investigations, and such sum or sums as may be required to pay the stenographer or stenographers employed by them under and by virtue of this resolution.

beg leave to submit the following report as the result of their investigations:

Your Committee held its first meeting at Sacramento, in the State Capitol building, on March 20, 1897, at which time they organized by electing John H. Dickinson as chairman of the committee. On November 3, 1897, at a meeting held in San Francisco, F. J. Brandon was elected clerk and stenographer, and from this date the Committee has devoted seventy-four days' time in their examination of the various State institutions and the necessary travel connected therewith, exclusive of the time individual members engaged in journeying to and from their respective homes to the places of meetings of the Committee.

The magnitude of the labor to be performed by the Committee was not realized in time to enable it to make as complete an examination as should have been made. At each of the institutions visited, how-

ever, enough time was devoted to, and a thorough investigation was made of, each and every department as to ventilation, sewerage, heating, lighting, and other details pertinent to the questions under investigation. From the institutions not visited answers have been obtained to questions submitted which correctly state the condition of such institutions regarding the above mentioned matters.

The examination and the answers submitted cover in the case of each institution the period of the last two administrations, it being the aim that a fair comparison could thus be arrived at as to the various matters of expense, employés, etc. The reports received from the various institutions in answer to questions propounded have been very full and explicit, but in preparing a report to be printed for the Committee, these answers have been edited and cut down in a very considerable degree. The originals, however, are preserved and are bound in three volumes, and are submitted with this report for the purpose of being filed for present and future reference. The condensation of all figures obtained, we believe, will be perfectly intelligible, and enable any one to easily understand what is intended to be arrived at in the way of costs, percentages, etc.

It has been impracticable for all of the Committee to attend at each of the examinations. Therefore, the testimony has been transcribed and each member of the Committee supplied with a copy that he might understand fully what has been done. The transcribed testimony taken, contained in four volumes, and amounting to 2393 pages, besides the three volumes above referred to, of original reports, and this report of your Committee, with the attendant condensed report, show the results in detail of the labors of the Committee, and we believe will be of great service, not only to this but to future legislators, and also to the executive officers of the government; for at the present time, outside of this report, there is no data available in anything like a condensed or intelligible shape that can be obtained, at the State Capitol or elsewhere, which shows the details of the cost, maintenance, condition, surroundings, available utilities, immediate and probable needs, of each or any of our State institutions, upon which such an immense amount of money has been expended from time to time. The chief object of the Committee has been to gather all of these matters together in a condition easy to refer to, so that when matters of any institution are under discussion by an executive officer of the State, or by the Legislature or any of its committees, the record is here presented which shows in a condensed and accurate form, all of the information concerning such institution that is desirable for any usual purpose.

Many matters familiar to legislators of experience will appear in this report, but they have been gathered together and inserted for the purpose of making the report as complete as possible in all of its parts.

Acts of the Legislature, previous reports received from the various institutions, and all available data have been considered as far as practicable by your Committee in this connection.

From November 3, 1897, to December 28, 1898, the following institutions have been visited and examined by the Committee in the order named:

State Prison, San Quentin.
State Prison, Folsom.
State Hospital, Stockton.

Preston School of Industry, Ione.
State Hospital, Agnews.
Normal School, San Jose.
State Hospital, Napa.
State Hospital, Ukiah.
Home for Feeble-Minded, Eldridge.
Veterans' Home, Yountville.
Home for Adult Blind, Oakland.
State Reform School, Whittier.
State Hospital, Highlands.
Normal School, Los Angeles.
Normal School, San Diego.
Harbor Commission, San Francisco.

The following boards and commissions have been inquired into by written interrogations as before stated, and statements from them are filed as a part of this report:

Pilot Commissioner, San Francisco.
Pilot Commissioner, Eureka.
Port Wardens, San Francisco.
Port Warden, San Diego.
Department of Highways, San Francisco.
Public Works, Sacramento.
State Mining Bureau, San Francisco.
Bureau of Labor Statistics, San Francisco.
Harbor Commission, Eureka.
Harbor Commission, San Diego.
Lake Tahoe Wagon Road Commission.
Yosemite Valley Commission.
State Board of Health.
State Veterinary Board.
State Dental Board.
State Board of Pharmacy.
State Board of Education.
State Board of Agriculture.
State Board of Horticulture.
State Analyst.
State Lunacy Commission.
Medical Society of California.
State Printing Office.

In order to present an impartial report on institutions, the subjects treated on have been of the same character, and in the same rotation, as will be found by reference to the index and to the committee's arrangement of topics.

It was found necessary to eliminate a vast amount of valuable information from the printed report, owing to the enormous quantity of the statistics compiled.

Particular attention has been given to the cost of lands, buildings and personal property, the systems of heating, ventilation, sewerage, lighting, bathing, etc., the manner of keeping accounts and reports; employment and discharge of help, purchasing of supplies, religious services and educational advantages, cost of maintenance, the needs of the present, and the requirements for future.

BOARD OF HARBOR COMMISSIONERS OF SAN FRANCISCO.

Your Committee made as exhaustive an examination of the affairs of the Board of State Harbor Commissioners in San Francisco as time and means would permit. The labor of making such an examination, and of gathering together any data that could be relied upon and would throw light upon the subject under investigation, is very great. It involved the examination by experts of the original plans, specifications, working drawings, and everything in connection with the building or superstructure of the new ferry depot at San Francisco. For this purpose Mr. Reid, of Reid Bros., and Mr. Faville, of the firm of Bliss & Faville, all of San Francisco, two expert architects of repute, were employed, and it took them something over three months to examine the above matters referring to the four principal contracts in connection with the building of said superstructure, viz.: masonry, carpentering, plastering, roofing, skylights, and glazing.

It was the original estimate that the total cost of the Union Ferry Depot at San Francisco would be not to exceed six hundred thousand dollars. By an Act of the Legislature the question was submitted to the people as to whether bonds should be issued for that amount in order that the building might be constructed rapidly, and at the same time the funds of the Harbor Commission might not be impaired for the purpose of extending the seawall, a matter of the most vital importance to the City of San Francisco and also to the State and its commercial interests. The bonds were voted, about seven thousand dollars premium added to the original six hundred thousand dollars became available for the purpose of building this depot. This fund constituted what is known as Depot Sinking Fund. About this time it was discovered that the foundation was not a part of the depot, so far as matters of construction were concerned, and that the foundation could be built and paid for out of the Harbor Improvement Fund, which fund is supplied entirely from receipts of the Commission for dockage, wharfage, tolls, rents, etc. As a result, the sum of $349,000, in round numbers, was expended out of the Harbor Improvement Fund for the construction of the foundation.

The original contracts for the building of the superstructure were let for the aggregated sum of $545,000 and work was commenced. As time progressed, revised plans, as they are called, were formulated, which plans did not seem to have changed anything in particular except as to the positions of partitions and conveniences. It was the custom of the Board when any changes were made, to get a proposal from the contractor engaged in doing the original work, showing in some instances deduction from his original contract by reason of the proposed changes and additions by reason, also, of the proposed changes. As a result of this system, there has been expended in addition to the original contract price of $545,000, on this superstructure up to the present time, $145,000, and about $90,000 more than was realized from the bonds, and from the careful examination made by your Committee's experts, and other testimony, backed by figures which were sent to all parties concerned, and who were given every opportunity they desired to combat the figures, your Committee is forced to the conclusion, and considers that it is abundantly supported by the evidence

taken, that the State has suffered an actual loss by reason of these changes of from $40,000 to $75,000, and the contemplated work is not yet completed. We leave this wide margin because the Committee did not consider it its duty to trace these figures down to a mathematical certainty, and we could not see how any recovery can be had or anybody punished in the premises; and to illustrate what is practically meant by this last remark, we beg leave to call your attention to the condensation of the reports of Messrs. Reed and Faville, which will be found attached hereto. This Commission seems to have entirely, during the last years, ignored the law where it suited their convenience to do so. While they perhaps were correct in determining that they could spend the money which they did in the building of the depot, and thus increase its cost so far as the public were acquainted with the facts, to the extent of about $350,000, yet, considering the necessity for the extension of the seawall and the great advantage to the commercial interests of the City and State in that work being done, and considering that when the $600,000 in bonds were voted for, it was supposed that that was to cover the cost of the entire building, and the further fact that as a result of the determination to build this foundation out of the Harbor Improvement Fund, work on the seawall has been absolutely blocked and nothing done since 1892, it seems rather a violation of that confidence which the people have placed in their officers, that this action should have been taken without a more serious consideration, and the taking of the people into their confidence by the Board.

And the Board, in the judgment of your Committee, has from fifty to seventy absolutely useless employés. There are at the present time two hundred and twenty-three upon its rolls. In three instances that we discovered, the employé is carried in two capacities and draws two salaries. There is, for instance, since the new depot has been constructed, a superintendent of the depot building. The law places the superintendency of that building in the Chief Wharfinger, and there is no occasion whatever for a superintendent of the building, except to give some one a place.

The engineer who is charged by the law with superintending all construction has also been practically ignored in the execution of work.

There is a deputy superintendent of repairs, whom the President of the Board said, in response to the question as to what his duties were, that he, the President, did not know that he had any. And it is a fair inference, from the testimony taken, that he has none, except to regularly and diligently draw his salary.

There is also a purchasing department established by the Board, consisting of a clerk and an assistant. The expense of maintaining this department amounts under the present system to $9,000 per year. The amount of supplies purchased through this department, outside of the lumber and piling and coal, in the purchase of which there is no occasion for any purchasing department or agent, amount, in round numbers, to the sum of $22,000. It is submitted that this expense is out of all proportion, and your Committee is of the opinion that the maintenance and operation of such department is absolutely useless and unnecessary, aside from the tremendous expense in proportion to the results accomplished.

There is no occasion for the employment of any police force by the

Harbor Commission in the city of San Francisco. It is the duty of the city and of its police department to take care of all property within the city. There is no authority of law and no necessity, so far as your Committee can learn, for the maintenance of any such force.

Watchmen are maintained upon the wharves, which is an unnecessary expense. The claim was made that because the State does not insure its property it becomes necessary to employ watchmen to guard it. Your Committee is of the opinion that there is nothing substantial in this claim. On all of the wharves occupied to any great extent by transportation companies, they themselves keep a watchman for the protection of their own property, and certainly the State has no occasion to keep one itself under such circumstances, and there is no occasion for the employment of these watchmen that your Committee is advised of.

The Belt Road is operated at a loss, and has always been, and it seems that the Commission should have devised some means by which it should be, at least, self-supporting, or else should abandon its operation. The payroll of this Commission has constantly increased year by year during the past eight years, and particularly during the past four years, while the receipts have been considerably less than in former years; and no reason is apparent as a result of our investigation for this increase. It is but fair to say of two of the Commissioners, that Mr. Harney, who took office in 1897, came in after all of the depot contracts and changes therein had been made, therefore cannot be charged with any negligence in that connection. Mr. Herrold, who took office in March, 1898, has had nothing to do with any of the matters above referred to in their origin or conduct. The Board, when the contracts for the construction of the ferry depot were let, and when the plans and specifications were adopted, and when the changes in and revision thereof was made, and when all of the prices concerning said changes were fixed, consisted of Messrs. Colnon, Cole, and Chadbourne.

We do not deem it necessary to make any extended remarks regarding each institution in detail, and in order that the report may be as short as possible, the following observations are made, and will be followed by certain recommendations resulting from our examination and observations.

STATE PRISONS.

San Quentin is so near the center of population that it makes it difficult to maintain discipline and to prevent the coming in of opium and other drugs, to the great injury and detriment of the prisoners themselves. This prison should undoubtedly be removed, and in due time and as a matter of economy we trust that it will be removed to the southern portion of the State. This to promote economy and safety regarding transportation as well as care and custody of the confined.

The Folsom Prison we consider to be fortunately situated. It is removed so that the prisoners can be kept practically aloof from all contact with the outside world, or communication with it, and at the same time it is sufficiently accessible for all useful and ordinary purposes. The grounds are ample, upon and within which the convicts are furnished with labor sufficient to keep them employed, and this, we are convinced, above all other matters, tends to assist in the maintaining of discipline. Statistics show confinement without occupation develops

everything that is bad in human nature, and if continued long enough, results in imbecility or insanity.

There is one difficulty at San Quentin. The grounds are small, necessitating confinement within the prison walls, where it is impossible under their present system to provide for any occupation for the prisoners except in the jute mill. And when we consider the large number—six and seven hundred at a time—working in this jute mill, supplied with many and necessary knives, and with weapons of various description, at hand all the time, it is strange that more murders, as well as other affrays, are not committed within the prison. It would undoubtedly be much better if prisoners were employed in sawing wood or breaking rock, even if no beneficial results financially were to be attained, than to have them without occupation. We deem the management of these institutions at present to be the best that the circumstances and conditions permit.

STATE HOSPITALS.

STOCKTON STATE HOSPITAL.

The hospital at Stockton is the oldest in the State, and while when located it was sufficiently far from any particular population, now the city of Stockton has grown until the hospital is within the town. It is surrounded by residences upon all sides. This we deem to be unfortunate. Outsiders interfere, more or less, where they have an opportunity, with other people's affairs, particularly the affairs of public institutions, and it would be much better were this asylum situated three or four or five miles away from any center of population; better for the patients, better for the public, and all concerned. We have in this institution an illustration of what a lack of system of supervision regarding public buildings results in. It is divided into two departments, male and female, in separate buildings, and for all practical purpose of operation, it is equivalent to two State hospitals at one place, when, if the buildings had been put closer together, or even as they are now situated, and if the proper location of the appurtenances had been made both buildings could have received their power from the same steam plant instead of from two separate ones, as now. This applies also to the heating and lighting.

This hospital seems to be well equipped except as regards water, the supply of which is very limited, as it seems to be at the majority of the State institutions; for in their location we find that but little attention has been paid to the natural advantages of the different sites, and it is a question as to how this institution shall be supplied in the future. It is struggling along now, but it is hoped that by development of wells and the use of pumping machinery a sufficient supply can be obtained.

AGNEWS STATE HOSPITAL.

This hospital is properly located so far as being near a center of population, and yet far enough away to be all right in this respect. The lack of water is very apparent here, but can probably be supplied at no very great expense by wells and pumping. The ground upon which this hospital stands is low and flat, and during the winter season is extremely wet and muddy. This has necessitated the raising of the

greater portion of the ground some three or four feet by filling in. In the summer it gets very dry, and there is no water on the surface, or which can be brought to it, except by pumping. If when the site for this was being selected, some care had been taken in looking to the water supply, which in a public institution of this character is of more than usual importance, that it should be ample and readily utilized, this trouble might have been avoided. Another instance where some supervision would have been beneficial.

NAPA STATE HOSPITAL.

Again we have an institution without sufficient water the year around for its necessities. This institution is remarkably well equipped, though if some of the money which went into the building of its many spires and gables and turrets had been utilized in the building of rooms for patients, the buildings would have cost much less than they have and been capable of accommodating many more patients, and the appearance of the building would still have been satisfactory. Several purchases have been made of additional properties for the purpose of increasing the water supply, and now it is proposed to make a large reservoir which will cost, perhaps, one hundred thousand dollars for the storage of water that the supply may be sufficient the year around. This we did not have time to examine into very thoroughly, and, in fact, it is a matter of expert engineering and estimate as to what is the best thing to do and as to its probable cost. We therefore would recommend, should any appropriation be made for this purpose, that it be made in such a way that it shall not be expended until by expert examination it shall be shown to be available. In many of our institutions a great deal of money has in times past been spent in experiments, when there was no occasion for so doing, and too often the result has been disastrous in a financial sense.

UKIAH STATE HOSPITAL.

The State Hospital near this place is very pleasantly situated, which will, after a sufficient number of experiments have been gone through with and money expended, receive a sufficient supply of water for its uses, which it does not now have. This is the youngest of the hospitals and is well situated, and with the appropriations now available, if expended according to the present plans and intentions of the authorities, will equip this institution very well for the immediate present.

SOUTHERN CALIFORNIA HOSPITAL.

This State Hospital is in San Bernardino County, and is well situated for all purposes, though here again there is a shortage of water; but it is believed that this will be overcome in due time by rendering more available the present source of supply, and by its development.

The management of this institution is good and economical, and is endeavoring to utilize, and has succeeded in a great degree, all of the natural advantages the property affords.

REFORM SCHOOLS.

PRESTON SCHOOL OF INDUSTRY.

This is situated near Ione, on quite a large piece of property, as yet comparatively unimproved. There is a large water supply for this institution for which the State paid $65,000, which water supply has never been available for domestic purposes of the institution by reason of its being so muddy and full of slickens that it could not be used. It is thought that by a system of dams, causing settling reservoirs, the water may be clarified for use. This we believe to be, under all the circumstances and conditions of this property, costly and in effect impracticable, and that the water coming from this source might be utilized for irrigation as far as possible, but water for domestic purposes will have to be secured from wells and springs on the premises and pumped to its destination.

We believe that the purposes of such an institution are proper and should be supported, but at the same time we must criticise a system which sends children of nine and ten years to be confined in an institution of this class, where there are those from fifteen to twenty years of age who have become hardened in crime. And to make this system available as to the best results, steps should be taken by which the inmates of this institution and Whittier can be classified from time to time as observation and experience may determine as to the respective inmates, and thus reduce, as far as possible, the evil results of association.

WHITTIER SCHOOL.

The general remarks with reference to the Preston School of Industry apply to this school, but a great mistake has been made at the Whittier School in endeavoring to combine two institutions, one for males and one for females, at the same place, and in the midst of surroundings which make it quite impracticable to accomplish what a school of this kind should succeed in doing. While the buildings for the respective sexes are situated at some distance from each other, yet they are very near the town, they are too near together, and the female department is situated right alongside of a main public highway. This situation makes it difficult to keep the males sufficiently away from contact with the outside world, and the female department has no privacy or security with regard to it as against the general public. We regret that the scheme of two years ago, to put the females in a separate school and by themselves, was not accomplished. This institution seems to be managed upon a paternal scale, carried to an extent which the conditions and circumstances do not seem to warrant. In institutions of this character we are satisfied that the sternest and most rigid discipline must be maintained, and kindness and leniency come as a secondary consideration and in a great degree as a reward for good conduct, for the reasons that those who are sent to such institutions are sent there under the authority of the law and by reason of its transgression. They should be made, therefore, to feel that it is a punishment, and at the same time they should be given to understand, and particularly it should be made apparent to them, that they have an opportunity to reform, that every

encouragement will be given to them to do so, and that kindness and leniency come as a reward for good conduct, instead of, as seems to be very apparent in the management of this institution, that kindness and leniency are first put forward in the administration of affairs. In other words, and to be plain, it seems to proceed too much upon the proposition that we desire to assist you and offer you all of the advantages, as if you were inmates here under ordinary conditions, instead of saying, you are here to be confined and punished for infractions of the law, but if you show yourselves worthy of it you shall be given every privilege consistent with the condition of affairs. To put it another way, the rewards of good conduct should come after they have been earned, instead of starting in with them, relying upon the future to show that the inmates are worthy of receiving such consideration. We further believe that there should be one of these schools exclusively for males, and one for females, and each so arranged as to permit of proper classification of inmates. This would render them easier of management, and the results would undoubtedly be more practical and satisfactory.

NORMAL SCHOOLS.

We visited the Normal Schools at San José and at Los Angeles, and the site for one at San Diego, which will soon be in operation. From our examination of these schools in operation, and reports received from other schools, the work for which they were intended is being well done, but we are of the opinion that there is an abundance of Normal Schools to meet all the requirements in that particular education in our State for years to come. As it is, a great many take a course at the Normal School apparently without any intention of ever becoming teachers, and yet to educate the pupils of these schools for teaching is the fundamental principle upon which they were based and are now being conducted. We would not for a moment say anything to interfere or to depreciate the value of the advantage of education, but when we consider the great number of common schools of the various grades existing in every county of our State, the extremely liberal support given to them by the State, and the advantages and facilities which they offer for the procurement of ample education for all of the ordinary and usual pursuits and vocations in life, and bearing in mind the expense of the maintenance of schools for particular purposes, we are of the firm opinion that our State is abundantly supplied with Normal Schools.

VETERANS' HOME.

We visited this institution and made a very cursory examination, for the reason that under the Act by which they were to deed to the State their property and become a State institution, and considering the fact that they had not done so, notwithstanding that they had drawn under an old law a large sum of money for the maintenance of the institution, all of which put the institution in an uncertain relation with the State, we did not feel at liberty to pry into any of their private affairs. The site of the institution is a very pretty one, and the hundreds of old veterans whom we saw there, and their happy condition, led us to

believe that they were being well cared for, as they deserve to be, and as we believe the State will always see to it that they are; yet until it becomes a State institution and under State control and management, we did not feel it within our province to inquire particularly into its affairs.

HOME FOR FEEBLE-MINDED, AT ELDRIDGE.

This institution is perhaps better situated to carry out the objects for which it is maintained than any other institution in the State. It is situated near Glen Ellen, in Sonoma County, and while it is easy of access, it is still removed from any center of population, and therefore affords the quiet and retirement required by patients, and is free from the interference of the curious and too often too inquisitive public. We devoted considerable time in the investigation of this institution, and we were most favorably impressed with the good care and attention paid by Dr. Osborne and his devoted wife to the management of this institution in all of its details. The children of a family could not be better taken care of and their individual wants better attended to by their parents than they are by these most worthy people. In its management there is an absence of officialism, too often apparent on the part of State officers who manage institutions somewhat similar in their functions. In making this observation we do not desire to be invidious at all, but after all of the visits which we made we feel that these remarks are due particularly to the management of this institution.

CALIFORNIA HOME FOR THE EDUCATION OF THE DEAF AND BLIND.

The foregoing general remarks as to the Home for the Feeble-Minded, apply also to this institution, under the care and charge of Dr. Wilkinson. He has long been at this post, is entirely familiar with all the details of the conduct, management, teaching, care, and custody of its inmates, and is held in the greatest esteem by the poor unfortunates under his charge. Economy, as will appear from his report and the testimony taken, has been and is practiced. This home and that for the feeble-minded are conducted more upon the same lines and with the same care and scrutiny that a private individual conduct his own affairs, than are any of the institutions that we visited. This condition of affairs is not to be attributed to any lack of diligence on the part of those in charge of the other institutions, or of care in the performance of their duties, but the conditions under which they exist and labor are very different, and more of the official relation between principal, subordinates, and patients necessarily comes into play.

HOME FOR THE ADULT BLIND.

This institution, located in Oakland, is not in as active manufacturing condition as it was previous to the last session of the Legislature. This is owing to an insufficiency of funds and a deficiency created by the attempt to provide the inmates with labor, viz: the manufacture of

brooms at a time when competition compelled the output to be made at a loss to the home. This deficiency should be paid, as it was created for the benefit of the inmates, financially, as well as to provide them with an occupation. The inmates should be kept occupied, as it seems to be their wish, and the home should be located where a diversity of occupations could be followed.

We regret that we could not devote more time to the duties of the Committee, that we might have visited all of the other institutions from which reports only have been received. The work is a very interesting one, and we believe that the data which we have obtained will be extremely useful in many ways, particularly for the information of the present and future legislators with regard to details which it is impossible to gather during the short session of the Legislature from any source or sources. A similar committee should be continued until all of the institutions are investigated which have not been visited, and, undoubtedly, further details which will occur to a reader of this report regarding those institutions which have been visited may thus be obtained.

In the past the legislator has had to rely upon the yearly reports submitted, which necessarily are in a very condensed and unsatisfactory form, so far as giving the details, yet they supplied all the information expected from them. To act intelligently regarding any State institution the legislator should have before him, from an authoritative source, information as to the various details, its situation and equipment, that he may be advised and enabled to act intelligently. This information we believe the work of this committee will furnish in a degree, and should a similar committee be appointed to continue the work, we believe that at the next session of the Legislature a very intelligent and comprehensive report can be framed and presented, which will be of incalculable assistance in the performance of their duty, not only by the legislators but to the executive officers of our State government.

RECOMMENDATIONS.

As conclusions from what we have done we beg leave to recommend the following:

First—That provision should be made for the issuance of bonds by the State, in a limited amount, for the erection of the necessary additions to the existing State institutions, and as to any future institution which may be established by the State, for the reason that these institutions, when established, exist for time, and the expense of their establishment, or what you might call the first cost in their existence, should not be all put upon one generation, but should be divided by a bonding system over this and future generations; that a system of this kind would tend to prevent extravagance in expenditures, and at the same time create a better class of buildings and improvements. We, of course, appreciate how a system of this kind might be abused, but at the same time, in this practical business age, we believe that, with regard to our State institutions, with the light that is thrown upon their conduct, management, and their needs by the public press, and by proper investigation, that politics would be practically erased in the consideration of

such questions, and that under the guiding hand and control of the Board of Examiners the best results can be and will be attained with the least expenditure. If, for instance, a public institution is to be established,or addition made to any present public institution that would cost, for example, $500,000, why should not this amount be spread over two generations instead of being all paid by one? In this way taxation would be lighter in the first instance, and the knowledge of the existence of the bonded indebtedness, and the necessary provision for its payment, would tend to keep taxation down.

Second—We are of the opinion that all moneys received from any and all sources by any State institution should be turned into the State Treasury to the credit of the general fund. As it is now, the entire plant and equipment of each institution is paid for by the State from the general fund appropriated for its maintenance, its general support and salaries. In the case of one class of institutions the patients, if able, are required by law to pay in a certain amount per month. This supplies the entire equipment, as well as the running expenses of the institution. In some institutions where dairies are kept, and properly so, to supply the institution, stock is purchased out of this general fund, but in the event of a sale of any of that stock, the proceeds, as well as the receipts from payments, go into what is called a "contingent fund." The same is true in many other relations, bringing us to the result that the State supplies the entire capital for the conduct of the business, and any proceeds resulting from the conduct of the business is put into what is called the contingent fund, which has been and is under and subject to the control of the boards of managers of these various institutions. The use of this contingent fund we believe to have been abused. The idea regarding the contingent fund originally was to pay slight and incidental expenses arising, and which could not be anticipated and provided for in the general appropriation. As a result the contingent fund has been applied in the various ways utterly inconsistent with this idea, as, for instance, at Napa, one residence for a resident physician has been built and largely paid for out of this contingent fund, and another is now in process of construction to be paid for out of the same fund. At Stockton the Board of Managers thought it advisable to buy a little piece of land to piece out what they already had to render the shape and form of the land more symmetrical. This was paid for out of the contingent fund, and we submit that it needs no reason to show that this is making use of the contingent fund in a way utterly contrary to the ideas upon which its existence was based. As a matter of fact, these contingent funds, and other moneys received in a similar manner, are entirely at the disposal of the boards of managers of the respective institutions, and we can see no reasons why these moneys should not all be turned into the State Treasury, and we are, therefore, of the opinion that economy and business prudence require that this should be done. And for the above reasons, and others which will be apparent to any one considering the subject, we do recommend that all moneys received by a State institution or State officer shall be turned into the State Treasury and go into the general fund; that all of its expenses shall be paid from the appropriation biennially made for that purpose, and that all bills of every kind and description shall be passed upon by the Board of Examiners in every instance. The credit of our State is certainly sufficient to enable all of the affairs

of each institution to be handled in this manner, and then the accounts are concentrated, and a better and more intelligent administration of affairs will certainly result.

BOARDS OF TRUSTEES, OR MANAGERS, OF INSTITUTIONS.

Third—Each of our State institutions has a Board of Trustees, or Managers, who are allowed a per diem and mileage for attending meetings of the Board. Each Board has also a Secretary and Treasurer, who is non-resident at the institution, and who receives a salary for doing what might just as well be done at each institution itself without any increase of clerical force, and with the result of simplifying and concentrating the accounts. The per diem and mileage of the different Boards of Managers and of the clerks and secretaries during the year 1898 amounted to $25,000! This expense, we believe, can be easily saved to the State and to the betterment of the public service. We are of the opinion that all of these Boards should be abolished; that the superintendent of each of these institutions should be, as he is by law in terms, charged with its management and with the employment and discharge of the different employés. We therefore suggest and recommend that these superintendents shall be directly appointed by the Governor, and to hold office until removed for neglect or incompetency upon charges preferred to and investigated by him. The abolition of the local Boards and the pursuing of this course, would save the State more than $20,000 per year, and increase the efficiency of the management. The Governor would then be held responsible for his appointees, and there would be no shuffling of responsibility from the superintendent to the board of local directors, and from both to the Governor; and the people, by reason thereof, are too often unable to determine the reason for the existence of any difficulty when such arises.

PRINTING.

Fourth—With regard to public printing, about which there has been much comment, we beg leave to report that time did not permit us to make a distinct investigation of this department. When we consider the amount of work that is thrown upon that office during the session of the Legislature, and the haste with which the work must be accomplished, and the general proposition that every State institution and officer is entitled to have whatever printing he desires, that there is no uniform system in the ordering of printing or in the editing of matter to be printed, it is difficult without a most extended investigation to reach satisfactory conclusions as to the results. But for the future, we would recommend that each State institution and officer be allowed, in the appropriation for their support and maintenance, a sufficient sum for printing; that when any printing is ordered, before its execution it should be authorized by the Board of Examiners, and when executed it should be paid for by the officer or institution ordering it, out of the fund appropriated for his or its maintenance, which amount should go into the treasury, either to the credit of the Printing Department or else into the General Fund. In this way extravagant orders would not be given, and it would be easier to trace and keep an account of the work, and the necessity for the work, done by this office. All work done in this office should be charged for at a price covering its cost, not including the cost of the plant.

BOOKKEEPING.

Fifth—We find that there is no uniform system of bookkeeping in these various institutions, but each seems to be a model unto itself. This makes it quite difficult for any committee or officer of the State to intelligently inspect the books of any institution at any time without more labor and time than ought to be required. We have submitted forms to the superintendents, wardens, principals, etc., for their inspection and criticism, and while the opinions differ as to any change being made in the present forms, it is generally conceded that improvement can be made that would result beneficially. We therefore recommend that the Board of Examiners be required to adopt a uniform system of bookkeeping for each State institution, so far as it may be possible to do so. Should this be done, the result would be, that any one desiring to inspect the books of the different institutions, would understand the books of each after he had familiarized himself with the method of bookkeeping by any one. The head of each institution should be held strictly accountable for all supplies received and issues made for the uses and benefits of the institution, therefore there should be a uniform system of bookkeeping, and of checks, in order that an intelligent inspection may be made and report thereof submitted at any time.

SUPPLIES.

Sixth—Under the existing system, advertising for supplies is often done in the aggregate and for the entire list of supplies. In some instances the bids are segregated and awards made by items. We believe the latter to be the best course, and that there should be annually a schedule of supplies prepared for the coming year containing an estimate in each case, of the quantity that would probably be required. Advertisements should be made for the supplying of these items in quantities more or less as stated in the schedule. This advertisement should be short and refer to the schedule merely as being on file and subject to the inspection of any bidder. In some instances the amount of supplies purchased by non-contracts is a very large percentage, and much too large, of all of the supplies required. In order that the institutions may reap the benefit of competition, we recommend the above course.

FUTURE BUILDINGS, IMPROVEMENTS AND ADDITIONS.

Seventh—While we recommend the propriety of architectural effect in the construction of public buildings, we are of the opinion that it has been recognized too largely in the construction of the present buildings; that utility has often been sacrificed, and at great expense to the State, to what might be termed architectural effect. We are, therefore, of the opinion that for the comfort and convenience of the inmates, and as a matter of economy, all future buildings and additions to present buildings should be constructed on what is known as the cottage plan, and of one story in height. This would enable the classification of patients in many institutions, to their great advantage. We hope, of course, that in our hospitals the patients committed there may improve and recover, and the probability of their doing so can be very much enhanced by their classification and segregation. Those suffering from the different sicknesses and forms of insanity should be classified and

kept apart in their particular form as much as possible. Our present institutions do not permit of this being done to any appreciable extent. By the cottage plan this could be accomplished, and it is the consensus of all medical opinion, and it seems entirely reasonable, and we have examined into the matter carefully, that much greater results in recovery could be attained in this way. Our buildings are constructed too much upon the plan that they are merely for detention and, in fact, imprisonment of the inmates, instead of affording them the opportunity of recovery.

MANAGEMENT AND EMPLOYÉS.

Eighth—Our inquiries have convinced us that the Boards of Managers of the various institutions exert altogether too great an influence in the selection and appointment of the various employés of their respective institutions. The State is responsible not only to the inmates of these institutions, but also to the State at large, and to humanity, for their proper administration. To get the best results each institution should be under some competent manager, fitted by education and experience for the performance of the duties of his position. He should have the selection of his subordinates, and the power of their removal, and not be handicapped, as all of them are now, by what are properly termed local influences, political or otherwise, and "pulls," in the making of his selection. Were he thus charged with the responsibility he would feel the dignity of his position, and his pride would be aroused in the proper exercise of his powers. Only competent employés would thus be employed, and incompetency would at once be remedied in the removal of the incompetent. Humanity demands that the wards of the State should be treated firmly, and particularly those who are sick, physically or mentally, should be treated with all of the humanity, skill, intelligence, and care that can be provided. The State has been and is liberal in all of these matters so far as money goes. Therefore, in the expenditure and application of this money, there cannot be too much skill and care exercised in the employment of its agents. It is inhuman, in the case of a State hospital, that any one should be appointed as an attendant upon the ground that he has a friend in the Board of Managers, or has a political pull, and that either is being used regardless of his qualification to fill the position; and in no other way, in our judgment, can this be remedied except to give the Superintendent the absolute power in the management of the internal force of the institution over which he presides. Let him then be responsible wholly to the Governor, who is the chief executive power of the State, and who in turn is responsible to the people at large. In this way, with or without a law, civil service will prevail, and come into effect and operation. The conduct of public institutions will be simplified and bettered in a great degree, we are firmly satisfied.

MANUFACTURES AND PRODUCTS.

Ninth—In the majority of our State institutions they have the facility and do produce a great deal of the food upon which they live, and manufacture much of their clothing, but this condition, in our judgment, can be very largely extended. For instance, in the State prisons there is labor available to cultivate and produce and manufacture almost everything requisite for any public institution, and at most of the hospitals, with a very slight expense, chiefly for superintendency and manage-

ment, a great deal can be also produced, oftentimes a great deal more than can be used at the institution itself, and by an intelligent system, if the labor of the various institutions and the land available in connection with each were also utilized, there could be a production in food and manufactures which could be easily and cheaply exchanged to the great benefit of the State financially, and to the great benefit of the inmates of these various institutions, mentally and physically; and we suggest that some general management be provided for the distribution of the available labor within our State institutions, in such manner that this end may be accomplished.

We regret that time has not permitted us to go more into detail regarding the various matters to which our attention has been brought. Our investigation has excited our sympathy and called forth the very best exercise of our judgment in the consideration of the various matters with which we have come in contact, and we trust that this is but the beginning of a systematic investigation from time to time of these institutions, and we have no doubt whatever that as a result their conduct and management of the same will be better in every respect, and the State also will be financially benefited.

COMMISSION IN LUNACY.

Tenth—This Commission, organized under the law of two years ago, has diligently worked during the past two years, and has done a great deal in the lines for which it was employed, but we are forced to the conclusion that its work is unnecessary and only a repetition of much labor which has always been and now is being done at the various institutions and is by existing laws imposed upon the proper officers. Simplicity is to be attained in the management of these institutions so far as possible. And, for instance, we submit that, if a schedule of supplies which it is thought will be required for the ensuing year at each institution is prepared by the manager thereof, and advertisements inserted therefor, and when the bids are received that they shall be submitted, as are all the monthly bills, to the Board of Examiners to approve both before action is taken regarding them, it simplifies the present machinery and obtains fully as good results. Therefore, we advise the abolishment of this Commission.

PUBLIC BUILDINGS AND ADDITIONS THERETO.

Eleventh—Our examination shows us that the provisions of the Act of March 23, 1876, regarding the approval of plans and specifications for buildings, etc., by the Governor, Attorney-General, and Secretary of State—practically the Board of Examiners—and that no work shall be done thereunder until such approval, and that no changes shall be made after their adoption except with the approval of this Board, have been too often ignored, and at a great loss to the State, and we recommend that the provisions of this Act should be strictly enforced in all departments.

JOHN H. DICKINSON,
JOHN J. BOYCE,
E. W. CHAPMAN,
W. F. PRISK,
C. M. SIMPSON,
Committee.

F. J. BRANDON, Clerk.

ADDENDA.

CORRECTIONS.

Page 25—*Home for Feeble-Minded Children.*

Should read: "Date of opening," May 22, 1884.
"Reopened," December 10, 1885.

Page 29—*San Quentin Prison.*

Table 2—"Received from Sales, etc."..... $1,287,707 70
"Received from State for Support"..... 4,587,153 40

Page 29—*Folsom Prison.*

"Received from State for Support"..... $2,108,000 00

Page 24—*Deaf, Dumb, and Blind Institute.*

Table 1—Should read: "From State for Support Only"..... $1,393,600 00
Table 4—Should read: "No. of Employés"..... 57

Page 31—*Preston School of Industry.*

Table 1—Should read: "Additional Acreage"..... 240
Page 32—Table 1—Should read: "Cost per capita per annum"..... $337 99
"Cost per capita per day"..... 95+

Page 32—*Whittier State School.*

Should read: "Cost per capita per annum"..... $302 15
"Cost per capita per day"..... 82¾

Page 170—*San Diego Harbor Commissioners.*

Amount of disbursements were..... $2,428 88
Cash on hand July 1st..... 29 92

Page 171—*Pilot Commissioners, San Francisco.*

Average per year for eight years was $87,557 34, instead of $8,755,734.

Page 175—*State Commission in Lunacy.*

Salary of General Superintendent, per year..... $4,000 00
Salary of Secretary was..... 2,100 00
Salary of other employés amounted to..... 4,964 65
Traveling expenses of Commissioners..... 703 75
Traveling expenses of Secretary, employés, and incidentals..... 1,519 79

Total expenses for forty-ninth fiscal year..... $13,288 19

SUMMARIES.

In the following tables the information cannot be considered as thoroughly accurate, but is as near so as the Committee could obtain from information procured:

EDUCATIONAL INSTITUTIONS—SUMMARY.

Showing Cost of Land, Buildings, Support, etc.

	Normal School, Los Angeles.	Normal School, Chico.	Normal School, San José.
Cost of real estate	Donated by citizens of Los Ang.	Donated by John Bidwell.	
Cost of buildings and improvements	$166,581 61	$120,000 00	$229,250 83
Received from state for support and maintenance only to June 30, 1898	364,065 94	220,000 00	977,400 00
From sales and other sources other than State support to June 30, 1898	7,400 06		(since 1880) $66,489 59
Buildings in course of construction*			

*Information could not be obtained.

DEAF, DUMB, AND BLIND INSTITUTIONS—SUMMARY.

Showing Location, Acreage, Water, Light, Fuel, Manufactures, etc.

	Home for Adult Blind.	Deaf, Dumb, and Blind Institute.
Location	Oakland, Alameda County	Berkeley, Alameda County
Establishment, date	1885	March 31, 1866
Date of opening		
Original acreage	Five and one half acres	One hundred and thirty acres
Additional acreage		
Total acreage	Five and one half acres	One hundred and thirty acres
Acres utilized	Five and one half acres	Ninety acres
Acres waste or pasture		
Water supply	Oakland Water Company, $20 per month.	Alameda Water Company—spring and tunnels.
Kind of fuel used	Coal	Coal
Kind of light used	Gas	Gas and electricity
Manufactured for own use	Brooms	
Manufactured for sale		
Lighting plant, property of	Oakland Gas Company	Oakland Gas Company
Sewer empties	Main lake sewer	San Francisco Bay

Showing Cost of Land, Buildings, Support, etc.

Financial.	Home for Adult Blind.	Deaf, Dumb and Blind Insti'te.
Real estate	$24,992 47	$12,100 00
Improvements and buildings		386,870 00
Furniture		
From State, for support only, to June 30, 1898	518,504 99	
From sales, care of inmates, and all other sources other than State, to June 30, 1898	195,084 27	13,966 67
Buildings in course of construction		

Per Capita Cost for Maintenance for Fiscal Years 1897-98.

	Home for Adult Blind.	Deaf, Dumb and Blind Insti'te.
Salaries	$101 74	$178 06
Food for inmates	73 75	36 63
Food for officers, employés and inmates	60 97	
Medicines	2 45	58
Clothing and wearing apparel		4 51
Furniture	2 28	2 81
Fuel	7 99	13 90
Light and power	3 25	
Farm and garden		7 99
Stationery	29	1 21
Telephone, telegraph and expressage	1 45	71
Sundries	19 40	29 20
Total cost per year per inmate	$273 17	$275 24

Showing Cost of Fuel, Light, Power, Maintenance, etc.

	Home for Adult Blind.	Deaf, Dumb and Blind Insti'te.
Cost of fuel fiscal year 1897-98	$836 13	$2,381 31
Cost of light fiscal year 1897-98	342 75	
Cost of power fiscal year 1897-98	66 75	1,959 56
Cost of water fiscal year 1897-98	170 00	221 43
Cost of maintenance	9,799 79	
Cost per capita per annum 1897-98	91 40	275 24
Cost per capita per day 1897-98	25.373	75.4
Pay-roll 1897-98	10,683 04	39,529 28
Cost of laundry	1,200 00	
Cost of sewer system	*	*
Receipts from all sources excepting State support for fiscal year 1897-98	10,927 22	

*Included in contract for building.

Showing Population, etc.

	Home for Adult Blind.	Deaf, Dumb and Blind Insti'te.
Actual capacity	107	275
Present population	107	212
Natives of California	40%	151
Natives of other States		44
Foreign born	60%	17
Average population for 1897-98		221
Number of employés	19	
Discharged, etc		
Number employed (inmates)	74	

HOME FOR CARE AND TRAINING OF FEEBLE-MINDED CHILDREN—SUMMARY.

Showing Location, Acreage, Water, Light, Fuel, Manufactures, etc.

Location	Eldridge, Sonoma County
Established	1880
Date of opening	May 22, 1884, December 10, 1895
Original acreage	51 acres. Afterward sold
Additional acreage	1,770 acres
Total acreage	1,770 acres
Acres utilized	510 acres
Acres, waste or pasture	1,184 acres
Water supply	Property of the State
Kind of fuel used	Coal and wood
Light	Electricity
Manufactured for own use	Shoes, clothing (for girls), vegetables and fruit
Manufactured for sale	
Lighting plant	Property of the State
Sewer empties	In grounds one quarter mile from building

Showing Cost of Land, Buildings, Supports, etc.

Real estate	$25,000 00
Improvements, buildings, etc	544,850 00
Furniture	15,838 03
Received from State for support only to June 30, 1898	552,600 00
Received from sales	12,408 86
Care of inmates	51,454 02
Special donations	8,756 36
Incidentals	3,463 70
Buildings in course of construction	

Per Capita Cost of Maintenance for Fiscal Year 1897-98.

Salaries	$57 67
Food for inmates and employés	35 46
Medicines	84
Clothing and wearing apparel	11 09
Furniture and bedding	2 50
Fuel, light, and power	14 26
Farm and garden	7 94
Stationery	53
Telephone, telegraph, and expressage	1 18
Sundries	7 29
Total cost per year per inmate	$138 76

Showing Cost of Fuel, Light, Power, Maintenance, etc.

Cost of fuel, light, and power for fiscal year 1897-98	$7,206 33
Cost of water and sewer system	8,426 19
Cost of maintenance for fiscal year 1897-98	74,185 85
Cost per capita per annum for fiscal year 1897-98	160 49
Cost per capita per day for fiscal year 1897-98	39
Payroll, 1897-98 (approximately)	30,000 00
Cost of laundry	3,795 75
Cost of lighting {Electricity	6,404 82
Cost of lighting {Gas	3,406 40
Receipts from all sources, excepting State support, for fiscal year 1897-98	10,515 49

Showing Population, etc.

Actual capacity	497
Present population	536
Natives of California	71 3/10 %
Natives of other States	20%
Foreign born	08 1/10 %
Average population 1897-8	69
Number of employés	*
Discharged, etc., 1897-8	10%
Escaped	None
Number of returned escapes	None
Number on parole, average	10 to 15

*Information was not given.

THE VETERANS' HOME OF CALIFORNIA—SUMMARY.

Showing Location, Acreage, Water, Light, Fuel, Manufactures, etc.

Location	Yountville, Napa Co.
Establishment	Oct. 25, 1882
Date of opening	*
Original acreage	*
Additional acreage	*
Total acreage	910 acres
Acres utilized	260 acres
Acres, waste or pasture	
Water supply	From springs
Kind of fuel used	Coal and wood
Light	Electricity
Manufactured for own use	Aprons, pillow cases, sheets, mattresses, pillows, bone meal, and soft soap
Produced for own use	Farm products
Lighting plant, property of	Property of the Home

* Information cannot be obtained.

STATE HOSPITALS—SUMMARY.

Showing Location, Acreage, Water, Light, Fuel, Manufactures, Etc.

	Agnews.	Mendocino.	Napa.	Southern California.	Stockton.
Location	Agnews, Santa Clara Co.	Mendocino, Mendocino Co.	Napa, Napa Co.	Patton, near San Bernardino, in San Bernardino County.	Stockton, San Joaquin Co.
Established		1889	1872	1891	1852
Date of opening		1893		1893	
Original acreage	275.13	130	207.93	363	114
Additional acreage	56.87			None.	15
Total acreage	332	130	1229.16	363	129
Acres utilized	332	100	339	323	129
Acres waste or pasture		30	890	40	

Water supply—
- Agnews, 10 artesian wells.
- Mendocino, South Mill Creek.
- Napa, creeks and reservoirs.
- Southern California, ditch, etc.
- Stockton, pumped from hospital wells.

Kind of fuel used—
- Agnews, coal and redwood.

Kind of light used—
- Agnews, gas and electric light.
- Mendocino, gas.
- Napa, gas.
- Southern California, gas and electric, hospital plant.
- Stockton, natural gas.

Lighting plant, property of—
- Mendocino, hospital.
- Napa, hospital.
- Southern California, Redlands Light and Power Company.
- Stockton, hospital.

Sewer empties—
- Agnews, into slough, connected San Francisco Bay.
- Mendocino, 3,000 feet from building, into creek.
- Napa, Napa Creek and lands of hospital.
- Southern California, on lands of hospital.
- Stockton, San Joaquin River.

Manufactured for own use—
- Agnews, ice.
- Napa, gas; ice, tinware, bedding, and bricks.
- Southern California, ice, wardrobes, benches, furniture, and brick.

Produced for own use—
Agnews, milk, vegetables, fruit, eggs, poultry, pork.
Mendocino, vegetables and hay.
Napa, fruit, hay, vegetables, grapes, and pork.
Southern California, vegetables, fruit, milk, pork, alfalfa, and hay.
Stockton, vegetables, hay, milk, eggs, and poultry.
Could produce for sale or exchange—
Agnews, fruit.
Southern California, fruit, eggs, and poultry.

Per Capita Cost of Maintenance for Fiscal Year 1897–98.

	Agnews.	Mendocino.	Napa.	Southern California.	Stockton.
Average number patients 1897–98	940	477	1,470	534	1,550
Salaries	$67 26	$91 16	$64 03	$73 94	$63 84
Food for patients and employés	30 87	40 37	37 65	35 49	34 64
Medicines	1 21	1 57	94	1 35	1 24
Clothing and wearing apparel	5 24	5 91	3 24	3 14	6 57
Furniture	2 07	----	15	1 48	3 03
Fuel	1 13	----	*8 76	9 82	5 04
Light	1 16	2 59	1 18	5 12	
Power	8 16	----	----	2 71	
Farm and garden	3 82	55	2 20	1 41	2 85
Stationery	37	38	15	48	18
Telegraph, telephone and express	17	66	† 15	† 31	11
Sundries	10 61	25 04	6 11	13 80	8 59
Total cost per year per inmate	$132 57	$168 22	$125 36	$149 05	$125 89

* Power included. † Ex. not included.

Showing Population, Etc.

	Agnews.	Mendocino.	Napa.	Southern California.	Stockton.
Actual capacity	1,000	530	1,466	390	1,615
Present population	946	477	1,440	575	1,557
Natives of California	----	60	192	109	623
Natives of other States	----	126	398	----	942
Foreign born	----	286	849	229	
Unknown	----	6	33	17	1
No. of officers and employés	104	58	172	66	163
Discharged, 1897–98	8.84%	34.59%	40.50 %	80.90 %	47.09% 39.01%
Escapes	.06%	.06%	.025%	.009%	----
Escapes returned	----	2	----	----	----
No. of inmates employed	----	----	215	175	432

Showing Cost of Land, Buildings, Support, etc.

	Agnews.	Mendocino.	Napa.	Southern California.	Stockton.
Real estate	$62,108 75		$37,889 40	$96,000 00	$16,770 00
Improvements and buildings, etc., from date of opening to June 30, 1898	632,195 81	$450,790 00	1,494,542 73	371,995 00	847,940 00
From State for support and maintenance, from date of establishment up to June 30, 1898	1,385,376 00	375,000 00	3,885,100 00	413,300 00	7,123,423 95
From State for deficiencies	5,000 00	45,000 00	54,293 22	29,750 00	278,347 82
From sales, and care of patients, and all other sources other than State, from opening to June 30, 1898		14,788 77	253,262 08	23,256 94 Patients.	359,989 41
Buildings in course of construction		60,000 00		None.	
Cost of furniture	40,489 03	Included in cost of bldg.	195,500 00	55,000 00	25,060 60
Totals	$2,125,169 59	$945,578 77	$5,920,587 45	$989,301 94	$8,651,531 78

Showing Cost of Fuel, Light, Power, Maintenance, etc.

	Agnews.	Mendocino.	Napa.	Southern California.	Stockton.
Cost of fuel for fiscal year 1897–98	$7,647 23	$4,692 52	$15,089 40	$3,392 40	$7,470 51
Cost of light for fiscal year 1897–98	*	1,500 00	1,703 31	2,734 58	
Cost of power for fiscal year 1897–98	*	*	†	1,447 92	*
Cost of water supply, if purchased	*	21,000 00	*	47,000 00	*
Cost of maintenance for fiscal year 1897–98	12,168 12	73,870 94	192,705 96	55,483 12	193,733 65
Cost per capita for fiscal year 1897–98	132 57	168 22	125 36	149 05	125 89
Cost per capita per day	38	44	38	40	34
Payroll for 1897–98	*	36,511 80	92,590 09	39,516 88	96,408 63
Cost of laundry	*	*	*	1,499 53	‡3,635 00
Cost of sewer system	15,194 55	3,000 00	*	5,000 00	10,000 00
Received from State from establishment of institution to June 30, 1898	1,965,923 38	586,724 38	5,725,296 22	982,631 41	8,202,586 05

* Information cannot be obtained. † Included in fuel. ‡ Equipment only.

STATE PRISONS—SUMMARY.

Showing Location, Acreage, Water, Light, Fuel, Manufactures, etc.

	San Quentin Prison.	Folsom Prison.
Location	San Quentin, Marin Co.	Folsom, Sacramento Co.
Established	July, 1852	Fall of 1874
Date of opening		July, 1880
Original acreage	20 acres	350 acres
Additional acreage	$310\frac{8}{100}$ acres	$133\frac{32}{100}$ acres
Total acreage	$330\frac{8}{100}$ acres	$483\frac{32}{100}$ acres
Acres utilized	78 acres	$275\frac{32}{100}$ acres
Acres waste or pasture	$252\frac{8}{100}$ acres	208 acres
Water supply	Marin County Water Co.	American River
Per year	$6,650.10	
Kind of fuel used	Coal	Coal and wood
Light	Gas, elec., and coal oil in cells.	Electric light
Manufactured for own use	Shoes, clothing, and tinware.	Ice, tinware, boots and shoes, clothing, beds, beddings (except blankets).
Manufactured for sale	Jute bags	Crushed rock and granite curbing.
Lighting plant property of	San Rafael Gas Co.	State of California
Sewer empties	San Francisco Bay	American River
Produced for own use	Vegetables, hay and hogs	Hay, vegetables, fruit, grapes, hogs, milk.
Could produce for sale or exchange	Shoes, clothing and tinware (could be done by increasing facilities).	

Showing Cost of Land, Buildings, Support, etc.

	San Quentin Prison.	Folsom Prison.
Cost of real estate	$50,910 55	
Jute mill	98,000 00	
Improvements and buildings	492,788 61	$665,559 06
Value of personal property		
Jute	350,828 75	
Value received from State for support		
Received from sales, care of inmates, and sources other than State		
Value of manufactured stock for sale and on hand	180,929 70	

Per Capita Cost of Maintenance for Fiscal Year 1897–98.

	San Quentin Prison.	Folsom Prison.
Average number of inmates	1,300	907.7
Salaries	$45 31	$54 49
Food for inmates	33 48	30 03
Food for officers	10 75	10 07
Medicines	4 94	1 96
Clothing and wearing apparel	14 73	11 10
Fuel		8 17
Light	3 97	2 73
Farm and Garden	68	87
Stationery		46
Telegraph, telephone and expressage	1 44	56
Sundries	72	5 43
Furniture	3 18	
Power		
Water	4 42	
Allowance to discharged prisoners	2 52	
Directors' expenses	2 72	
Total cost per year per inmate	$129 11	$125 87

Showing Cost of Fuel, Light, Power, Maintenance, etc.

	San Quentin Prison.	Folsom Prison.
Cost per annum—fuel	$4,947 12	$5,722 18
Cost per annum—jute mill	17,075 45	
Cost per annum—light, gas	3,202 01	
Cost per annum—light, electricity	2,100 00	1,224 11
Cost per year—(gross)	172,365 83	107,862 46
Cost per day—(gross)	36	32
Cost per annum per capita	129 11	118 83
Cost of food per meal per inmate	12	08¼
Pay roll 1897–1898	60,493 54	50,300 00
Pay roll 1897–1898 jute mill	24,099 33	
Percentage of discharges 1898	26 27	
Food and salaries per year, officers, etc.	84,592 87	

Showing Population, etc.

	San Quentin Prison.	Folsom Prison.
Actual capacity	1,478	1,000
Present population	1,336	928
Natives of California	378	297
Natives of other States	564	337
Foreign born	408	294
Average population	1,304	907
Number of employés, officers, etc.	73	64
Number of employés, jute mill	31	
Discharged		
Escapes	1	19
Returned escapes		16

REFORM SCHOOLS—SUMMARY.

Showing Location, Acreage, Water, Light, Fuel, Manufactures, etc.

	Preston School of Industry.	Whittier State School.
Location	Ione, Amador County	Whittier, Los Angeles Co.
Established	March 11, 1889	March 11, 1889
Date opened		July 1, 1891
Original acreage	320 acres	40 acres
Additional acreage	250 acres	120 acres
Total acreage	570 acres	160 acres
Acres utilized	270 acres	160 acres
Acres waste or pasture	300 acres	
Water supply	From spring, carried to house in wagon.	
Kind of fuel used	Oak and pine	Crude oil, wood, and coal.
Light	Electricity	Electricity
Manufactured for own use	Shoes, slippers, clothing, skirts, underclothing, vegetables, hay, grain, pork, poultry, eggs, and milk.	Fruit, vegetables, milk, alfalfa, mfg. shoe shop, bakery, printing office, paint shop, blacksmith-shop, carpenter-shop, and conservatory.
Manufactured or produced for sale	*	*
Lighting plant property of	School	*
Sewer empties	On lands of school	*

* Information could not be obtained.

Showing Cost of Buildings, Support, etc.

Financial.	Preston School of Industry.	Whittier State School.
Improvements, buildings, etc.	Buildings, $190,038 13	$227,942 28
Furniture		
From State support to June 30, 1898	295,000 00	630,000 00
From sales and all other sources other than State support to June 30, 1898		
Building in course of construction	56,000 00	

Per Capita Cost of Maintenance for Fiscal Year 1897–98.

	Preston School of Industry.	Whittier State School.
Average number of inmates	141	300
Salaries	$151 11	$142 99
Food for inmates	63 15	47 09
Food for employés	38 69	16 93
Medicines	1 46	1 45
Clothing and wearing apparel	16 425	20 86
Furniture	*	4 12
Fuel	18 98	
Light	*	26 74
Power	*	
Farm and garden	19 71	7 65
Stationery	3 285	5 43
Telephone, telegraph and expressage	*	1 29
Sundries	24 82	27 60
Total cost per year per inmate	$337 99	$302 15

*Information could not be obtained.

Showing Cost of Fuel, Light, Power, Maintenance, etc.

	Preston School of Industry.	Whittier State School.
Cost of fuel, fiscal year 1897–98	$2,900 00	$8,860 53
Cost of light, fiscal year 1897–98	Nominal cost	
Cost of power, fiscal year 1897–98	$70,139 51	52,687 50
Cost of water right	64,339 51	17,995 50
Cost of maintenance, fiscal year 1897–98	*	100,135 20
Cost per capita per annum, 1897–98	62,500 00	98,000 00
Cost per capita per day, 1897–98	*	*
Pay roll, 1897–98	26,403 96	50,880 00
Receipts from all sources excepting State support, for the fiscal year 1897–98		
Cost of laundry	2,084 00	5,344 00
Cost of sewer system	1,300 00	1,700 00
Cost of maintenance per annum, with cost of plant added, and 5% interest		119,515 59

*Information could not be obtained.

Showing Population, etc.

	Preston School of Industry.	Whittier State School.
Actual capacity	250	375
Present population	141	307
Natives of California	102	*
Natives of other States	34	*
Foreign born	5	
Average population 1897–98		
Number of employés	42	
Discharged from 1894 to June 30, 1898	2,919	
Escaped from 1894 to June 30, 1898	303	

*Information could not be obtained.

EDUCATIONAL.

UNIVERSITY OF CALIFORNIA.

Is located at Berkeley, Alameda County, California.

The following figures have been made up from information gathered and in answers to questions sent by your committee to the President of the Board of Regents and the Secretary of the University.

There was expended during the year ending June 30, 1898, for salaries, $210,724 39. To other employés there was expended during the same year, $48,093 22. A copy of the payroll shows the amount of salaries for the administration of different departments to be $277,357 33 per annum, to which was to be added $250 for the Secretary of the Editorial Committee for extra services.

The cost of the buildings on the University grounds has been to date $690,558 85. There is no way of ascertaining the cost of furniture.

There are what is known as the Diploma Deposit Fund and the Laboratory Fund. The money for these funds is acquired by deposit made by students when they enter the University, and returned to the depositor in the event of his leaving before graduation. The laboratory deposits are to cover costs of materials used, and the unused balance is returned to the student. There was in the Diploma Deposit Fund on June 30, 1898, the sum of $12,625.

The expense attendant upon the student at the University, other than that of the purchase of books and stationery, is for laboratory deposits and military uniform. The University furnishes no books to students.

The source of revenue for the institution is from the interest on amounts derived from the sale of one hundred and fifty thousand acres of land grant by the United States, the sale of tide lands, seminary grant, public building grant, State tax, and private donations.

The income for the fiscal years ending June 30, 1891, to 1898, is as follows:

1891	$261,446 57	1895	$306,999 40
1892	295,016 40	1896	332,467 68
1893	285,316 95	1897	379,756 22
1894	290,251 56	1898	542,050 26

The income of 1897 includes $43,340 61 for account of affiliated colleges building, and for 1898 includes $169,048 91 for account of affiliated colleges building.

The University has $1,271,500 loaned on mortgages.

The estimated value of all property owned or controlled by the University is $4,290,450. There is at present no building in the course of construction, but the following named buildings are contemplated:

Addition to Chemical Laboratory	$5,000
Addition to Observatory	1,500
Addition to Gymnasium	2,000
Auditorium and furniture	2,000

On June 30, 1898, there were 1,665 students, exclusive of affiliated colleges in San Francisco, of which 963 were males, and 702 females. Of these 1,033 were natives of California, 505 natives of other States, and 120 foreign born, and 7 whose birthplace is unknown.

Graduates.

June 30, 1890	47	June 30, 1895	116
June 30, 1891	56	June 30, 1896	154
June 30, 1892	63	June 30, 1897	180
June 30, 1893	76	June 30, 1898	211
June 30, 1894	104		

MAINTENANCE.

The cost of maintenance, including salaries and all expenses by terms since June 30, 1890, up to and including June 30, 1898, is as follows:

1891	$278,291 04	1895	$319,150 23
1892	278,465 36	1896	308,290 87
1893	319,220 55	1897	348,470 08
1894	313,712 38	1898	621,643 09

The cost of maintenance per graduate for 1898 was $2,946 18.

The average cost per capita per student is $373 36 for the year ending June 30, 1898.

The only supplies or articles necessary for the use of students are purchased by the University or its employés and sold to the students, and are chemicals and glass ware, which is sold to the students at cost.

There are no specific rules as to visiting the University or the students.

The Secretary is the bookkeeper at the University. The balance sheet is taken monthly and kept in a book for that purpose.

The accounts are audited by a regularly appointed Auditor and examined by order of the Board of Regents monthly. All supplies are purchased by bid in open market. Each purchase is approved by the President of the University.

Requisitions are made by the heads of departments for practically all purchases.

Inventories of all furniture and articles belonging to the University are taken yearly, the last inventory having been taken June, 1897, one copy of which was sent to the Board of Examiners, and one copy kept on file in the Secretary's office.

The following is a table showing the number of teachers and students for each year, from 1870 to 1898, inclusive:

Year.	Number of Officers and Teachers.	Number of Students.	Year.	Number of Officers and Teachers.	Number of Students.
1870	12	40	1885	47	241
1871	15	93	1886	52	250
1872	15	153	1887	57	288
1873	20	185	1888	60	306
1874	24	191	1889	75	363
1875	34	237	1890	86	401
1876	47	310	1891	80	456
1877	46	307	1892	110	547
1878	47	320	1893	123	648
1879	45	332	1894	135	815
1880	44	268	1895	144	1,124
1881	47	246	1896	156	1,336
1882	44	224	1897	160	1,498
1883	44	215	1898	189	1,665
1884	46	216			

The average rate of salaries in 1890 is shown as $1,607 17, and in 1898 as $1,369 40.

Teachers are appointed yearly and at the pleasure of the Board of Regents.

Teachers are given leave of absence other than during regular vacations after service at the University for a number of years. Sometimes salaries continue during such leave of absence and sometimes they do not.

LIBRARIES.

The library contains 76,500 volumes, and was acquired by purchase, gift, and through exchanges.

There are no religious services observed.

REVOLVING AND CONTINGENT FUND.

The amount of the revolving funds are:

President	$400
Secretary	200
Agricultural	250
Agricultural Statistics	200
Lick Observatory	800

The cost of fuel, light, and water for 1897 was $4,105 80, and for 1898, $1,650 95.

The amount of receipts from all sources, except State support, for the fiscal years ending June 30, 1897, and June 30, 1898, were:

1897	$214,444 09
1898	226,946 00

STATE NORMAL SCHOOL AT CHICO.

LOCATION.

The Chico Normal School is situated in Butte County, on the line of the Oregon Division of the Southern Pacific Railroad.

HISTORY AND DATE OF LOCATION AND PURCHASE OF PROPERTY.

The school was established in 1888 and 1889, and was opened on the third day of September of the latter year, with four teachers and between seventy and eighty pupils.

The land upon which the school is situated was donated by John Bidwell. It contains eight acres, all of which is utilized for buildings and grounds.

TRUSTEES.

There are seven Trustees: Hon. James H. Budd, Governor, ex officio; Charles T. Meredith, Superintendent of Public Instruction, ex officio; C. M. Ritter, President of the School, ex officio; E. Graham, Berkeley; G. E. Harvey, Chico (has tendered his resignation); C. A. Oliver, Chico; C. A. Reynolds, San Francisco. The last four were appointed June 18, 1897.

No per diem nor mileage is allowed members of the local board.

The President of the school, C. M. Ritter, is secretary, and receives a salary of $150 per annum.

Regular meetings of the board are held on the 25th of each month, as provided for by the by-laws.

The amounts paid for actual expenses of the board were as follows:

State Superintendent S. T. Black	$12 80
C. M. Ritter, President of School	14 80
G. E. Harvey	14 80
C. A. Oliver	14 80
C. A. Reynolds	19 60
	$91 60

This amount was partly paid from the "Tuition Fund," and partly from the "Supplies Fund."

As members of the joint board, the following mileage was paid from the "Tuition Fund":

C. M. Ritter, President of School	$108 20
E. Graham	150 20
G. E. Harvey	150 20
C. A. Oliver	150 20
C. A. Reynolds	96 00
Total	$654 80

BUILDINGS.

The cost of buildings to date is $120,000, and consists of one large, compact building.

The assembly hall is too small for the present needs of the school, and the same could be enlarged by extending the rear wing about 30 feet, at a cost of about $15,000.

VENTILATION.

The system of ventilation is by use of windows, doors, and transoms, and at top and bottom of rooms by additional ventilators, which extend through the wall. The system is not the best, but it suffices.

FUEL.

The fuel used by the school is second-growth oak, and costs about $300 per year.

HEATING.

The building is heated by four large hot-air furnaces in the basement, from which a conductor, one foot in diameter, extends to each room. The system is satisfactory.

WATER.

Water is obtained from the Chico city waterworks, at a cost of $200 per annum.

LIGHTING.

Gas is used for lighting purposes and furnished by the Chico Gas Company. Average cost per year is $240.

SEWERAGE.

The system of sewerage consists of a large cesspool or cistern, into which drainage from the building is carried by an excellent system of plumbing and conduits.

There should be a system of sewerage instead of cesspool, and the cost of such change would be about $20,000.

CAPACITY.

There are about 500 pupils in all departments, and the building is filled to its utmost capacity.

There are eleven class-rooms in the Normal Department, with a seating capacity of 35 to each room; these are teachers' rooms for instruction and recitations only.

PUPILS.

During the year 1897–98, 255 pupils were enrolled in the Normal Department, and 198 in the Training Department.

Number of females in Normal Department, in 1897	199
Number of males in Normal Department, in 1897	56
Number of females in Normal Department, in 1898	221
Number of males in Normal Department, in 1898	64

The Training Department is more evenly divided. No record is made of the nativity of pupils.

The number of graduates and the cost of maintenance per graduate is as follows:

Year.	Graduates.	Maintenance.	Student.
1891	17	$604 00	$67 00
1892	24	703 00	84 00
1893	32	750 00	74 00
1894	30	816 00	70 00
1895	52	472 00	56 00
1896	44	619 00	62 00
1897	33	822 00	65 00
1898	20	1,401 00	62 00
Total	252	$7,039 00	

MONEY AND ARTICLES BELONGING TO PUPILS.

The only money required from the students is a deposit of $5 at the time the pupil enters the school, and it is kept as a safeguard against loss or destruction of books or other property belonging to the State, and which they are allowed to use; and for the further purpose of defraying expenses in laboratories.

No goods or articles are bought by the school and sold to the pupils.

All persons have free access to the school and any of its departments at all times, without any formality or restrictions.

ACCOUNTS AND BOOKKEEPING.

The books kept by the Secretary are the minutes of the Trustees and an account book.

All accounts are audited on the twenty-fifth of each month, by the Executive Committee of the Board of Trustees.

There are no formal requisitions.

The inventories of movable articles are taken often, but not regularly. *As provided by statutes*, within a few months of each other, all articles are checked off; the last complete inventory was taken one year ago, and a copy of the same is now on file at the school.

The present system of bookkeeping is adequate for protection of the State; a more elaborate and expensive system could, of course, enter more into minor details.

TUITION FUND.

The Tuition Fund is a fund in which are deposited all sums received other than from State appropriations.

The amount in the Tuition Fund on June 30, 1898, was $759 37. The total receipts in said fund since the establishment of the school are $8,435 82. The difference between the two foregoing amounts is the amount taken from this fund for supplies, library, etc., when the same was needed for that purpose, or any other urgency for the welfare of the school.

SUPPLIES.

Supplies are issued to the teachers only, and no account is kept with the teachers procuring supplies.

Supplies are purchased by bid, usually, and at the lowest rates, previously obtained, except in case of articles needed immediately, and are generally purchased in San Francisco, from prices received on lists submitted to different houses.

TEACHERS.

On June 30, 1895	9 teachers to 232 pupils.
On June 30, 1896	10 teachers to 216 pupils.
On June 30, 1897	10 teachers to 217 pupils.
On June 30, 1898	10 teachers to 255 pupils.

In addition to the teachers in the Normal Department, the teachers in the Training Department, with about 200 pupils, have been as follows: 1890, 2; 1891, 2; 1892, 3; 1893, 3; 1894, 3; 1895, 4; 1896, 5; 1897, 5; 1898, 5.

The year 1898 includes the Kindergarten Department, which had not been organized previously.

There has been no material increase or decrease of salaries. The salaries of old experienced teachers have been slightly increased from time to time, and as new teachers are elected, their salaries are fixed somewhat lower for the first year.

The law requires that teachers be elected annually, and the board elects on the 25th of June.

Teachers are always elected by the board on nomination by the President. They (the board) may and do sometimes reject his nominees.

There have been no discharges of teachers. Those who have not been satisfactory have not been elected again at the end of the year.

The amount of the payroll for year ending June 30, 1898, is $27,900.

The teachers, with the exception of C. M. Ritter, the President, were elected for one year. Another must be added for next term, commencing January 30, 1899. No extra compensation is paid to any teacher. Teachers have no time off duty, excepting regular vacation.

In the minutes of the Board of Trustees is kept a record of all matters of election, resignation, etc., of teachers.

SUPPLIES.

The value of supplies on hand June 30, 1898, was about $100.

LIBRARY.

The library contains a little over 6,000 volumes of books and valuable pamphlets, mostly acquired by purchase, although about 1,000 volumes were donated to the library.

The library is open from 8 A. M. until 5 P. M. in week days, and from 9 A. M. until 12 P. M. on Saturdays.

All pupils and teachers have free access to the library during library hours.

A responsible librarian is in charge at all times, and all books taken from the library are charged to the persons taking, and if loss occurs, the value of the book or books is taken from the $5 deposit by the pupils.

RELIGIOUS SERVICES.

At the opening of the school each morning, a short selection is read from the Bible; sacred music is interspersed with other music. The Young Women's Christian Association of the school holds a meeting once a week in one of the classrooms.

PUNISHMENT AND CORRECTION.

No corporal punishment is ever administered.

There is no system of fire drill, but on every floor there are reels and hose attachments, with abundant water supply.

STATE NORMAL SCHOOL AT LOS ANGELES.

LOCATION.

The building is located near the center of the City of Los Angeles. Street cars within two blocks run to all the railroad stations in the city. It is but five minutes' walk to the business portion of the city.

HISTORY AND DATE OF LOCATION AND PURCHASE OF PROPERTY.

In March, 1881, an Act was passed by the Legislature, establishing a branch State Normal School in Los Angeles.

Up to July, 1887, the branch Normal School was governed by the same laws and was under the control of the same trustees as the Normal School at San José. The branch was first opened in August, 1882.

The property was purchased by the citizens of Los Angeles, at a cost of $9,000, it is said, and given to the State. It is now worth $50,000.

TRUSTEES.

There are five Trustees, besides the Governor and State Superintendent, ex officio: A. E. Pomeroy, Los Angeles; T. P. Lukens, Pasadena; Percy R. Wilson, Los Angeles; J. Marion Brooks, Los Angeles; Edward T. Pierce, Los Angeles.

The first four were appointed by Governor Budd one year ago last June. Mr. Pomeroy was to serve one year, but his successor has not at this writing been appointed. Mr. Lukens was appointed for two years; Mr. Brooks was appointed for three years; Mr. Wilson was appointed for four years. Mr. Pierce, by virtue of his appointment as President of the school, is a Trustee.

Mileage is allowed when they attend meetings of the board. As all the Trustees live either in Los Angeles or in Pasadena, near by, no mileage has been paid during the past year or since the appointment of the board.

The President of the School, Edward T. Pierce, is secretary of the board. He serves without extra pay, but is allowed a secretary and office girl, who receives $30 per month.

There is no appointed treasurer. The money is paid out as soon as it is received. As soon as a warrant for money comes from the State Treasurer, the money is collected by the president and secretary, and paid over to teachers and creditors.

The by-laws call for a meeting of the Board of Trustees twice each year. They meet oftener on the call of the president of the board. The Executive Committee meets every month to pass on bills.

Nothing has been paid to the Board of Trustees for mileage or pay for any meetings or work during the year ending June 30, 1898.

ACREAGE.

There are about four and one half acres of ground. The whole space is occupied by buildings, lawn tennis grounds, lawn, and ornamental grounds, with the exception of about one half acre at the back of the gymnasium, which is barren.

BUILDINGS.

There is the main building, costing $138,520 79; one gymnasium and equipment, costing $10,000; one chemical laboratory, costing $1,500.

The present condition of the chemical laboratory building is good, except for the bad light in the rooms of the Practice School on the lower floor. More windows are needed, arranged in a different manner, and will cost in the neighborhood of $5,000.

VENTILATION.

The system is air, heated by steam. The air, after being heated, is thrown into the rooms by fans. The foul air is taken from the rooms by fans and thrown out of the building. For the power to run the fans, there is a small engine of about ten horse-power, which is about half the power needed. The air is heated by radiators under the rooms at the bottom. The radiators are supplied by a forty horse-power boiler.

The effect is to supply each room in the new part of the building with pure heated air, and to exhaust the foul air from the bottom without subjecting the pupils to drafts from windows or doors. This applies only to the new part of the main building. The old part of the building, the chemical laboratory, and the gymnasium, are ventilated only by windows. A bill for $6,000, for extending the hot-air system to the

old part of the building, was passed by the Legislature of four years ago, but it was never signed by the Governor.

It will cost $7,500 to make the system complete and extend it to all parts of the building. To extend it to all of the buildings the plant should be placed outside by itself, thus making the whole cost $10,000.

FUEL.

Coal is used in the stoves in the old building, in the chemical laboratory, and in the gymnasium. Petroleum is used to supply heat in the new part of the building.

No change of fuel is advisable under the present circumstances. Cost during fiscal year 1897–98, $298 46; average daily cost, $1 65.

HEATING.

The old part of the building, the chemical laboratory, and the gymnasium are heated by stoves. The new part of the building is heated by hot air.

WATER.

The supply of water is from the City of Los Angeles. There are ten rooms fitted with basins, closets, and urinals, fitted up with modern plumbing, marble slabs, and basins. There are also washbasins in most of the private rooms of the teachers.

The sanitary condition is good, according to the inspection made by the State Board of Health.

LIGHTING.

Lighting is done by gas. It could be improved by lighting with electricity; the new part of the building is wired for that purpose.

Wiring old part of building and putting in lights in the new building cost at least $750 for fixtures and all.

SEWERAGE.

The buildings are all connected with the city sewers, according to the regulations of the city, with the exception that there is still some vitrified sewer pipe running from the old part of the building.

POWER.

There is no power except that used to heat the building, and it has already been explained.

CAPACITY.

The capacity is about 600 normal students for the year, or 550 at one time.

There are twenty-two class-rooms and laboratories, one gymnasium room, and one assembly room in the Normal Department proper.

There are no parts of the building that are not now in use.

PUPILS.

There were 526 pupils at the close of last term (50 boys and 476 girls). The average attendance last month was, for boys, 49; for girls,

466. There are 164 pupils who are natives of California; 342 pupils are natives of other States of the Union; 29 pupils are foreign-born.

Year.	Graduates.	Maintenance.	Per Capita.
1884	22	$20,376 76	$926 22
1885	35	12,537 53	358 21
1886	43	16,672 98	387 74
1887	48	13,896 67	289 51
1888	35	18,420 54	526 30
1889	57	18,091 06	317 39
1890	49	21,379 67	415 91
1891	72	20,857 45	289 69
1892	78	21,625 89	277 25
1893	91	22,197 16	243 92
1894	76	23,958 24	315 24
1895	84	35,807 92	426 28
1896	65	40,741 42	626 79
1897	55	41,112 71	729 32
1898	88	47,389 94	538 52
Total	898	$374,065 94	*$417 66

* Average cost per capita.

As about half the students entering at the present time are high school graduates, and therefore take but two years in the school, the number of graduates from this time on will increase in proportion to the number of students and teachers, and the cost per capita will decrease.

MONEY AND ARTICLES BELONGING TO PUPILS.

The school does not have in charge money and articles belonging to the pupils. The only exception to this is a deposit of $5 made when a student enters school. This is paid back at the end of any term when it is required, less any sum required for damage or breakage. This money, according to the rules of the board, is kept by the President, and is always subject to call when a pupil leaves school. Much of it is paid back at the close of the June term, when students go home. There was in the hands of the President, at the close of last term, the sum of $1,646, belonging to students.

ACCOUNTS AND BOOKKEEPING.

There is a minute book of the Board of Trustees, in which is kept a record of all bills passed by the Executive Committee. Then there is the regular account book, in which is kept an account of all appropriations on one side, and on the other, expenditures. These books are kept by the Secretary. There is also a petty cash fund.

The Executive Committee audits the accounts monthly.

Requisitions are made on the State Controller, by the Trustees, for warrants for the payment of expenses.

Requisitions are issued by the Executive Committee. The President orders things that are required for general use, and the bills are audited by the Executive Committee.

Inventories are taken every year. The last having been taken this fall, a copy of which is kept in the office.

An account of perishable articles is kept in the book in the secretary's office. The articles are under lock and key in the supply room, and the key is in the office.

SUPPLIES.

Supplies are purchased usually by contract for the year, and the different wholesale houses are notified that bids will be received for the required articles.

The greater part of supplies are purchased by contract and are generally obtained in Los Angeles, to be delivered at any time during the year, and in such quantities as are needed.

The accounts are vised by the President monthly.

As the books are simply a transcript of the action of the Executive Committee in passing bills, there is an examination every month. The balance sheet is taken monthly.

CLINICAL RECORDS, AS KEPT.

Every student who has entered the Normal School since September, 1895, has had a physical examination, made by Miss Sarah J. Jacobs, Director of Physical Training. This examination consists of a personal history, keeping a record of name, age, birthplace, nationality of parents and grandparents, occupation of father, hereditary diseases, general condition of health, personal habits, dress, etc. About forty measurements of the body are taken, including weight, height, girths, breadths, depths, lung capacity, and strength tests. Where organic disease is suspected, an examination is made by Dr. Shults, one of the faculty of the school, or by Dr. Elizabeth Follansbee.

The students are measured again at the end of the first year in the school, and some individuals are measured frequently.

Since September, 1897, careful examination of eyes of all entering students have been made by Dr. Thorpe.

As a consequence of this physical training, carefully adjusted to the needs of each student, there have been fewer cases of students leaving on account of sickness than in most schools of the size of this. On the contrary, the gain in weight, lung capacity, and general strength has been very marked, as shown by the statistics kept. Most students are in a better physical condition when they leave the school than when they enter.

OFFICERS AND TEACHERS.

Year.	No. of Pupils.	No. of Teachers and Officers.	Salaries.	Rate of Increase of Teachers.	Rate of Increase of Pupils.	Increase Total Salary per Year.	Average Salary all Teachers per Year.
1883	126	4	$4,900 00				$612 50
1884	187	7	10,425 04	38%	48%	$525 00	947 73
1885	231	7	11,050 60	*9%	23%	625 50	1,105 06
1886	252	8	12,590 80	10%	9%	1,540 20	1,144 60
1887	278	8	13,299 90		10%	709 10	1,209 08
1888	279	9	14,719 80	9%		419 90	1,226 65
1889	297	10	14,869 80	6%	8%	150 00	1,143 83
1890	288	11	16,920 00	7%	*4%	2,050 20	1,208 56
1891	335	11	18,070 00		16%	1,150 00	1,290 71
1892	329	11	17,690 00		*2%	*380 00	1,263 50
1893	334	11	18,410 00		1½%	720 00	1,315 00
1894	363	11	18,555 45		8%	145 45	1,325 39
1895	476	18	26,707 00	100%	31½%	8,151 21	953 81
1896	498	20	32,045 00		46%	5,338 34	1,144 46
1897	566	21	33,680 86		13 6/10%	1,635 86	1,203 00
1898	616	23	39,138 55	3½%	8 4/10%	5,457 69	1,384 00

* Decrease.

The Training School teachers received up to 1896 but $20 per year. Since that time they have received $240, the rest of their salaries being paid by the city of Los Angeles.

Six of the increase in number of teachers for 1895, or 36%, is explained by the fact that the Practice or Training School was enlarged so as to have all the nine grades of the public school represented, adding to the expense at that time, however, but $720 for this increase during the year.

The increase in the number of Normal teachers who gave all of their time to instruction in the Normal Department is apparently 64%, but this was for a part of the year only. The number of Normal teachers is in the same proportion to students as it was in 1888.

From that time till 1895 there had been a greater increase in students than in the proportional number of teachers. This sudden increase is explained by a committee of teachers who had been members of the faculty for most of the time since the school was organized.

Teachers up to the present time have been employed each year for the succeeding year, either during May, June, or July. They have always been employed by the Board of Trustees. The Executive Committee has the power to fill vacancies till the next meeting of the board, when such action can be indorsed or not by the board.

As teachers have been employed by the year, there have been no discharges since the school was organized. There have been a few resignations.

PAYROLL.

The amount of the payroll for the fiscal year ending June 30, 1898, was $67,950.

EMPLOYÉS.

Besides the teachers, there are three janitors—two men and one woman—of the main building, one of the gymnasium, an engineer, a gardener, an assistant librarian, and a secretary employed by the State.

SUPPLIES.

The value of supplies on hand June 30, 1898, was about $76.

LIBRARY.

There are about 6,000 volumes; with the exception of State and Government reports and a few donations, the books have been acquired by appropriations made by the legislature.

The entire collection is used as a reference library, but students are at liberty to take any volume over night, and for a longer time such as are not needed in connection with the work of the school classes.

RELIGIOUS SERVICES.

The religious services consist of a short reading from the Scripture by the President, and a chanting of the Lord's Prayer by the school.

PUNISHMENT AND CORRECTION.

The only punishment is reproof, suspension or expulsion. No record is made of the first, unless something of a serious nature has occurred. Sometimes this is given by the President or the Preceptress, or even a

class teacher, and sometimes it is given by an Executive Committee of the faculty, appointed by the President, and occasionally after the action and in presence of the whole faculty. In the two latter cases, a record of the action is kept.

Students may be suspended or expelled by the President for a serious offense, like stealing. Generally no record is kept of this, and no publicity is given to it. Sometimes an expulsion is made by the faculty as a whole. When this is done, the action is recorded in the minutes of the faculty. There have been very few instances of either kind of punishment during the history of the school.

CONTINGENT FUND.

There is a petty cash fund. The total amount of receipts from same since the establishment of the school up to June 30, 1898, has been $3,710 93.

The amount expended for repairs and permanent improvements has been $474 63; and for sundries, $3,017 54, making the total amount expended $3,492 17. Balance on hand, $218 76.

BOOKKEEPING.

The present system seems to answer all needs. It cannot be improved, unless it is to keep a separate account with different items, like lighting and heating and supplies.

A system of charging up supplies in a book for the purpose, and debiting each teacher with what has been used by he or she, is now in use.

PER CAPITA COST PER ANNUM.

For—	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Officers	$18 82	$15 85	$16 14	$15 90	$14 23	$10 86	$10 38	$9 14	$9 37
Teachers	30 31	38 59	39 39	39 67	31 75	44 72	54 56	50 54	54 58
Employés	2 09	1 88	1 85	1 97	7 56	5 98	5 46	4 91	5 70
Furniture	07	4 75	90	31	56	2 40	6 39	2 61	60
Fuel	74	23	74	38	62	1 32	40	1 04	49
Light	11	09	10	12	19	37	30	26	28
Water	73	64	52	69	53	75	78	1 11	95
Garden	4 43	3 79	2 97	2 59	2 27	2 74	2 60	3 01	2 06
Repair	2 43	1 29	1 29	2 43	37	3 55	1 24	80	92
Stationery	68	94	69	76	88	1 48	36	1 13	89
Telephone, Telegraph, Expressage	22	16	17	19	59	17	31	23	16
Library	1 26	1 89	1 52	1 47	2 05	4 42	6 39		1 86
Trustees' mileage		09	1 41	1 65	06	97	71		
Sundries	10 61	5 82	2 50	1 11	1 67	12 57	2 73	2 55	2 10
Total	$75 50	$76 01	$70 19	$69 24	$63 33	$91 33	$92 61	$77 33	$79 96

There has been no system of fire drill until lately. It has not seemed to be necessary, because of the large number of staircases and entrances in different parts of the buildings.

The system now used empties the building in one and one half minutes, and will be practiced about once in two weeks.

Hose and fire-extinguishers are all that are provided to put out fires. The present system could be improved.

The cost of buildings and improvements from the opening of the school to June 30th, 1898, is		$166,581 61
Amount received from State for support and maintenance only		364,065 94
Amount received from State for library, museum, furniture, and apparatus		22,843 56
Amount received from sales and all sources other than State appropriations:		
Amount received from unknown sources for original building	$3,769 13	
Amount received in petty cash fund	3,710 93	
		7,480 06
Total amount received by the school from all sources		$570,971 17

Cost of fuel, fiscal year 1897–98, was $298 46.

Cost of light, fiscal year 1897–98, was $184 65.

Cost of water, fiscal year 1897–98, was $786 35.

It is impossible to ascertain the cost of the sewer system, as it is included in other improvements for which there are no other separate itemized accounts in the reports.

Receipts from all sources excepting State support, for fiscal year 1897–98, was $480 35.

STATE NORMAL SCHOOL AT SAN JOSÉ.

LOCATION.

The State Normal School at San José is located on "Washington Square," in the City of San José, county of Santa Clara, and is about one mile from the Southern Pacific broad and narrow-gauge stations.

HISTORY AND DATE OF LOCATION AND PURCHASE OF PROPERTY.

An Act, providing for the establishment of the State Normal School, was passed by the Legislature of the State of California May 2, 1862, and an appropriation of $3,000 for its support for five months was made.

In March, 1870, the Legislature selected San Jose as a permanent location for the State Normal School. On June 14, 1871, the Normal School opened its first session in San José. Until the new building was ready for occupation, rooms were furnished by the Board of Education of San José, first in the High School building and afterwards in the Reed-Street school building. The block known as "Washington Square" was later given by the City of San José to the State of California as a permanent site for the school, and the building thereon completed in 1876.

TRUSTEES.

The Board of Trustees is composed of four appointed members, and three ex officio members.

Name and Residence.	Date of Appointment.
Jas. M. Pitman, San José	June 18, 1897.
R. E. Wilhoit, Stockton	June 18, 1897.
Mrs. E. A. Wilson, Oakland	June 18, 1897.
Col. J. E. Doolittle, San Francisco	June 18, 1897.
James H. Budd, Sacramento	Governor of State of California.
C. T. Meredith, Sacramento	Superintendent of Public Instruction.
A. H. Randall, San José	President of Normal School.

The Trustees receive mileage while in actual attendance upon the meeting, the same to be paid out of any appropriation made by the Legislature for the purpose. But no appropriation having been made by the last Legislature for mileage, the Trustees have received none.

The officers are: Secretary, Elizabeth Blaisdel, of San José, $150 per annum; Treasurer, Mr. S. B. Hunkins, of San José (receives no salary).

Two regular meetings of the Board of Trustees are held during the year, and when business of the school requires it special meetings are held at the call of the secretary, when directed by the chairman of the Board of Trustees.

No amount of mileage per diem was paid Trustees during year ending June 30, 1898.

BUILDINGS.

On February 10, 1880, the Normal School building was totally destroyed by fire. The said building was erected in 1876 and cost $285,000.

The new building was ready for occupancy on May 2, 1881, and the cost of same was $148,936 95. In 1891 an additional building was erected for a Training Department, and total cost of completing and furnishing same was $47,500. The buildings are fifty feet apart and connected by an inclosed bridge.

VENTILATION.

The system of ventilation is as follows: Steam generated in boiler passes through coils of pipe in heating stations in buildings for heating purposes; part of the steam operates duplex pump propelling water for running motor. The motor propels blowers, which fan air over coils of pipe and through conduits into rooms to be heated and ventilated.

By this system of heating and ventilating, pure cold air is forced over coils of iron pipe filled with steam, where it is warmed, thence forced through conduits leading to the rooms of the buildings. When the system is in operation pure warm air is constantly passing into the rooms and impure air is being forced out.

The appropriation for fuel is not sufficient to perfect the ventilation of the buildings when heat is not required. Estimated cost of this would be about $3,000 biennial appropriation.

HEAT AND POWER.

Coal is used for power and heating. From July 1, 1897, to July 1, 1898, total tons consumed $237\frac{115}{240}$; cost, $1,521 57; average daily cost, $4 86.

The only power used by the school is steam.

WATER.

The supply of water is received from three artesian wells on the grounds. The system is satisfactory and the present condition is good, but entirely inadequate for protection against fire. It can be improved by the addition of another well, which would cost about $150.

LIGHT.

Gas is used for lighting purposes and furnished by the San José Light and Power Company. Average cost per month is $5.

SEWERAGE.

All washbowls and closets are connected by pipes, trapped and protected according to the latest sanitary requirements, with the sewer system of the City of San José. The system is satisfactory, and the present condition is good, and additional sewerage not necessary. There are sixty closets; fourteen of these are of the Syphonia pattern, twenty-one of the same make, but different pattern; and twenty-five old valve style. It will not be possible to give the cost of laying pipes and connecting with the city sewer system, because that expense was included in the contract price of building, plumbing, etc.

CAPACITY.

Annex building: Capacity, 300; 16 school-rooms, including 14 recitation-rooms and two laboratories. The school is divided into nine grades. Capacity of each class-room, about 15.

Main building: Capacity, 620; 17 recitation-rooms, about 24x36, seating capacity 36; 7 laboratories; school divided into twenty-two classes. Average number of persons in each class, 32. There is no portion of either building not now in use.

At the close of last term there was enrolled 575 students. It is not possible to give the daily attendance of each sex, as no record is kept of the same.

On November 17, 1898, the attendance was 651, and of that number 475 students were natives of California; 158 natives of other States, and 21 were foreign born.

Money belonging to students is never kept on deposit at the school, either in the hands of officers or teachers.

There are no restrictions as to persons visiting the school. Friends of students are allowed to visit them at such times as will not interfere with their regular school work, during study hours and during intermission between class recitations.

The number of graduates for each term commencing June, 1890, up to and including all terms to June 30, 1898, is as follows:

Term ending—	Graduates.	Term ending—	Graduates.
June, 1890	92	June, 1895	99
January, 1891	37	January, 1896	62
June, 1891	67	June, 1896	104
January, 1892	29	January, 1897	75
June, 1892	80	June, 1897	34
January, 1893	53	January, 1898	14
June, 1893	83	June, 1898	72
January, 1894	55		
June, 1894	79	Total	1,092
January, 1895	57		

The small classes of June, 1897, and January, 1898, were due to the fact that an additional year was added to the course of study and only those taking irregular work would complete the work.

COST OF MAINTENANCE.

The cost of maintenance, including salaries and all expenses, since June 30, 1890, is as follows:

Forty-second fiscal year, ending June 30, 1891	$46,474 66
Forty-third fiscal year, ending June 30, 1892	49,275 39
Forty-fourth fiscal year, ending June 30, 1893	51,491 48
Forty-fifth fiscal year, ending June 30, 1894	52,327 99
Forty-sixth fiscal year, ending June 30, 1895	51,427 64
Forty-seventh fiscal year, ending June 30, 1896	53,395 42
Forty-eighth fiscal year, ending June 30, 1897	51,161 69
Forty-ninth fiscal year, ending June 30, 1898	51,190 75

PER CAPITA COST PER GRADUATE.

The average cost per capita per graduate since June 30, 1890, is as follows:

Fiscal Year.	Maintenance, etc.	Graduates.	Cost.
Forty-second	$46,474 66	104	$446 87
Forty-third	49,275 39	109	452 06
Forty-fourth	51,491 48	136	378 54
Forty-fifth	52,327 99	134	383 04
Forty-sixth	51,427 64	156	329 66
Forty-seventh	53,395 42	166	321 65
Forty-eighth	51,161 69	109	469 37
Forty-ninth	51,190 75	86	595 24

ACCOUNTS AND BOOKKEEPING.

The following books are kept: A minute book, in which a record of the transactions of the Board of Trustees is kept; a minute book, in which a record of the transactions of the Executive Committee of the Board of Trustees is kept; an account book, for salaries, supplies, grounds, library, and apparatus appropriations; a cash account book, for tuition fund, and same for students' deposit fund.

The present system of accounts and bookkeeping has been in use since 1882, and is adapted to the needs and requirements of the school. The present system does not serve as a check on articles supplied to the different departments or classes.

TUITION FUND.

Funds, other than State appropriations, are the students' deposit fund and tuition fund. A deposit of $5 is paid by each student on entering the school. This is simply held as a deposit, and is refunded when they leave school, if there are no charges against them for injury to books, building, or furniture, or on the books of the library. This money is in the hands of the Treasurer, Mr. S. B. Hunkins, of San José. A tuition is charged all pupils enrolled in the Training Department of the State Normal School, and money thus received is designated "Tuition Fund."

At the last of every month the Secretary prepares all bills against the school, and they are audited by the Executive Committee, composed of three members elected by the Board of Trustees at every annual meeting.

REQUISITIONS.

Requisitions for supplies are made in writing by the President of the school, by and with the consent of the Executive Committee of the Board of Trustees.

The President of the school has not full power to issue requisitions.

INVENTORIES.

An inventory of all furniture and articles belonging to the school was taken, as required by law, on May 5, 1897. Record of the same is kept in typewritten form on file in the office.

SUPPLIES.

No account is kept of the receipts and disbursements of articles and supplies, on account of the very small quantity (aside from fuel), averaging about $15 a month, and the distribution is placed in the hands of the Secretary.

Fuel, stationery, and other supplies, the need of which can be determined in advance, are purchased by contract.

The Trustees advertise in the daily papers of San José, usually about ten days, asking dealers to call at the office and secure from the Secretary a schedule of supplies needed.

Eighty per cent of goods are bought on contract, and twenty per cent non-contract.

Supplies are generally purchased in San José. Accounts are revised by the President once a month, and books examined by order of the Trustees usually at each annual meeting.

No clinical record of any kind is kept.

OFFICERS AND TEACHERS.

It is impossible to give, from the records, the percentage of increase or decrease in teachers, compared with the increase or decrease of pupils, year by year, since the establishment of the school. Since 1884, however, the increase in the percentage of teachers employed has been somewhat in excess of the increase in the number of pupils, but this is due to the change from the old text-book method of instruction to the modern method of practical individual work in the laboratory, together with the introduction of manual training, physical culture, and the necessity of maintaining a kindergarten training department.

The annual payroll amounts to $49,630.

No extra compensation is paid to any teacher.

Other than regular vacation days, teachers do not have any time for recreation or time off duty.

Other than teachers and officers, an engineer, janitor (who selects two assistants), and three gardeners, are employed.

On June 30, 1898, there was a supply of fuel on hand of the value of $200. That was practically all the supplies.

LIBRARY.

The library contains 6,500 volumes, purchased by special State appropriations. It is in charge of a librarian, who devotes all her time to library work. Students have the privilege of spending their study

hours in the library. As a result, the room is always in use by many students during the school hours of the day, and is often overcrowded. Free access is given to the shelves, and a system of charging is used which admits of the greatest freedom in the circulation of books, consistent with their use by so large a number of students.

RELIGIOUS SERVICES.

No religious services are held.

PUNISHMENT AND CORRECTION.

No punishment of any kind is administered to students in the school. Students found to be habitually immoral are required to leave the school. These cases, however, are extremely rare.

CONTINGENT FUND.

The amount on hand in the contingent fund on June 30, 1898, was $896 23.

It is impossible to give the total amount received since the establishment of the school in 1862, but since 1880, $62,021 35 has been received; $61,125 12 has been expended, leaving a balance of $896 23.

The general plan has been to use this fund for salaries of gardeners and engineer, and to make up deficiency in payroll of teachers at the end of each fiscal year. Since January, 1896, however, $969 37 has been expended for permanent improvements (apparatus, laboratory tables, and lockers).

PER CAPITA COST OF PUPILS PER ANNUM.

Fiscal Year.	Average Belonging	Per Capita Cost
Forty-second	472	$95 37
Forty-third	525	87 02
Forty-fourth	545	84 08
Forty-fifth	556	89 61
Forty-sixth	571	85 51
Forty-seventh	555	86 19
Forty-eighth	498	98 27
Forty-ninth	598	89 63

There is no system of fire drill, and protection against loss by fire is very inadequate. There is included in the estimates for appropriations for the fifty-first and fifty-second fiscal years $1,500, for piping and plumbing building for protection against fire.

SUMMARY.

Cost of Buildings and Improvements.

Building erected in 1870 (destroyed by fire in 1880)		$285,000 00
Building erected in 1880	$148,936 95	
Heating apparatus	10,000 00	
Furnishings	10,000 00	
Fitting up laboratories	2,813 88	
		171,750 83
Building (Annex) erected in 1891		40,500 00
Heating and ventilating apparatus		7,000 00

RECEIVED FROM THE STATE FOR SUPPORT AND MAINTENANCE.

Support (including salaries)	$977,400 00
Library	11,000 00
Apparatus	3,000 00
Furnishing	10,000 00
Water supply and improvements on grounds	29,000 00
Painting and repairing buildings	2,250 00
Museum cases	500 00
Heating and ventilating apparatus	14,000 00
Laying sidewalks	6,400 00
Care of grounds	13,500 00
Repairs	9,000 00
Grounds, library, museum, and apparatus	5,000 00
Library and apparatus	1,250 00
Deficiencies	15,276 05
Total	$1,097,576 05
State appropriations for maintenance, etc.	$1,097,576 05
First building	285,000 00
Second building	148,936 95
Third building (Annex)	47,500 00
Total	$1,579,013 00

Amount received from sales and all other sources, other than State appropriations (since 1880), $66,489 59.

Cost of fuel, fiscal year 1897–98, $1,622 67.

Cost of light, fiscal year 1897–98, $71 80.

It is not possible to give cost of sewer system, as the cost was included in the contract price of building.

Cost of maintenance per annum for forty-ninth fiscal year, with cost of plant added, and 5 per cent interest:

Support		$50,000 00
Grounds		2,500 00
Library and apparatus		1,250 00
Normal building		171,750 83
Annex building		47,500 00
		$273,000 83
5 per cent interest added		13,650 04
Total		$286,650 87

The amount received for fiscal year 1897–98, excepting State appropriations, $1,342 85.

HOMES.

DEAF AND DUMB ASYLUM.

LOCATION.

The site of the institution embraces one hundred and thirty acres of land situated at Berkeley, overlooking the Golden Gate. It is close to the University of California, and has convenient and cheap communication with Oakland and San Francisco by electric and steam lines.

The law providing for the removal of the institution from San Francisco was approved March 31, 1866. The commissioners appointed under the act were A. W. Saxe, Ira P. Rankin, J. L. Downing, J. A. Benton, and William Sherman. After visiting and considering forty propositions, the commissioners purchased, for $12,100, in February, 1867, the property in Berkeley, and erected thereon a stone building, which was destroyed by fire in January 17, 1875. The land is worth to-day nearly $200,000. No additional property has been purchased since the original purchase.

DIRECTORS.

The Board consists of five Directors, as follows:

Name and Residence.	Appointed.
A. J. Ralston, Berkeley	February, 1898
Brewster A. Hayne, Berkeley	January, 1896
Henry Pierce, San Francisco	March, 1897
Benjamin F. Bergen, Berkeley	January, 1898
James Palache, Berkeley	June, 1898

The Directors receive no per diem or mileage.

I. H. Clay is secretary and treasurer of the Board. His residence is Oakland; his salary $1,000 per year.

The Directors meet every month on the last Friday before the first Monday of the month. They have received nothing during the year ending June 30, 1898.

ACREAGE.

The property is utilized as follows:

For buildings and grounds	20 acres
Garden and vegetables	5 acres
Pasturage and dairy (hill land)	80 acres
Orchards	15 acres
For timber	10 acres
Total	130 acres

EMPLOYÉS.

All employés of the institution, except the physician and secretary of the board, are selected by the Principal, and their appointment continues as long as their service is competent and faithful. When a vacancy

occurs it is supplied by the Principal. Servants are engaged from the intelligence offices in San Francisco, giving references from former employers. Where a vacancy occurs, and there is one in a lower position who has shown the proper qualities, he or she is promoted to fill it.

VENTILATION.

The system of ventilation, by reason of the segregated character of the buildings and the mildness of the climate, is very simple, and depends largely upon open doors and windows. In addition to this, a method used in the English courts has been adopted that serves the purpose of the institution admirably. In the centers of the rooms pipes, six to eight inches in diameter and six feet high, introduce fresh air from the outside, which rises into the room, above the heads of the occupants, avoiding all danger of draughts. The foul air is taken from the bottom of the room by flues. The system works admirably, and there is nothing to suggest for improvement.

POWER.

Steam is used for power, hot water for heating, electricity for lighting until half-past nine o'clock at night, when gas from the Oakland Gas Company is used for lights which have to be continued all night. The cost of machinery, boilers, etc., is $3,600.

FUEL.

For boiler and steam purposes: Total amount, 827,320 pounds; total cost, $1,959 56; daily consumption, 1,133 pounds; daily cost, $2 68.

For kitchen, heating, and household purposes: Total amount, 751,180 pounds; total cost, $2,802 97; daily consumption, 1,029 pounds; daily cost, $3 84.

All departments: Total consumption, 578,400 pounds; total cost, $4,762 63; daily consumption, 2,162 pounds; daily cost, $6 52.

The heating is done by hot water. Each building has a furnace looked after by the janitor or servant of that house. The system is perfect, its condition excellent and no improvements can be suggested.

WATER.

The main supply of water for the institution comes from a spring on the hill, high enough to supply all the tower tanks by gravitation, and whose situation makes contamination impossible. The outflow of the spring is inadequate to the needs of the institution. Several tunnels have been driven and some water obtained, which flows into the reservoir over the spring. In summer about 5,000 gallons a day are needed; in winter the spring gives a sufficient supply. To help out in times of scarcity the system connects with the Alameda Water Company. During the last two years, there have been purchased from that company 1,590,984 gallons, at a cost of $442 87, or a daily purchase of 2,180 gallons, costing a trifle over 60 cents a day.

The advisability of attempting to increase the water supply, so long as water can be purchased, is doubtful. The spring will probably always furnish enough water for drinking and domestic purposes,

wherein absolute purity is required, and the extra water needed for laundry, lawn, and garden purposes can be obtained from Alameda Water Company.

LIGHT.

The present system of lighting is by gas and electricity. The system is perfect. The cost to date has been:

For engine and setting	$845 75
Dynamo and installation	2,200 00
Belting	49 02
Making a total	$3,094 76

The plant has been running for five years, and has cost 75 cents for repairs. It is now apparently in as good order as when installed, and no improvement is necessary.

LAUNDRIES.

The laundry apparatus is complete for the requirements, and costs to date $1,940. There are no improvements to suggest.

SEWERAGE.

The system of sewerage has had the unqualified approval of the State Board of Health, and has an outlet into San Francisco Bay.

BATHING.

The different halls are supplied with iron bathtubs, lined with porcelain. In three of the halls there are plunge baths in addition. The system is satisfactory. No appropriation has ever been made for the purpose of changing or improving the system. Although Strauss and Moss halls have been built and in constant use for over twenty years, the tubs and plumbing are in excellent condition.

CAPACITY.

The five halls were built to hold 50 pupils each, but Bartlett Hall will accommodate 75 pupils without crowding. The refectory can seat 300, and the whole institution could take care of 300 pupils if a segregated hospital were erected. This addition to the equipment would give five rooms, and will accommodate at least 25 pupils. A room in each hall is set aside for sick-room purposes.

PUPILS.

The roll is as follows at present: Deaf boys, 90; deaf girls, 72; blind boys, 27; blind girls, 23; total, 212.

The nativity of the pupils is as follows: Born in California, 151; born in other States, 44; born in foreign lands, 17.

The cost per capita for the year ending June 30, 1898, was $275 24. Interest on the plant, $386,870, at 5 per cent, amounts to $91 24 per capita, or a total of $366 48.

There are no rules for visiting the pupils. Parents and friends come when they choose.

There are no pay pupils from California. The institution is part of

the public school system of the State, and is free to all deaf or blind children of suitable age and capacity for instruction, whose parents or guardians are bona fide residents of the State. If parents are too poor to pay for clothing, a certificate to that effect from a Superior Judge authorizes the institution to provide clothing. Pupils from other States are entitled to the benefits of the institution by paying $300 a year, under which provision the State of Nevada pays $1,350, and the Territory of Arizona $300, a total of $1,650.

BOOKKEEPING.

There are two sets of books kept for all receipts and expenditures. One set is kept by the Treasurer, who has on file all original receipts and vouchers for expenditure. The Principal keeps the other set, with duplicate vouchers. The present system of bookkeeping is satisfactory.

REQUISITIONS.

The Principal receives requisitions every morning from the different halls, and, if approved, signs and passes them to his clerk, who fills them, enters the items on his book, and charges them to the different houses. After that, the requisitions are destroyed. Inventories are taken every year.

SUPPLIES.

The clerk receives and issues groceries and provisions, which are kept in the store room.

The purchase of supplies is partly by contract and partly in the open market. Coal is always contracted for by the year. For groceries, printed schedules are issued to various wholesale houses, asking for bids for a three-months' supply of all standard goods.

The Principal receives all money paid in on account, and reports the same to the Board at its monthly meeting. The clerk keeps the books, which are examined by the Principal every day.

No clinical records are kept, except the daily notation by the physician of children reported sick, with the nature of the ailment, and the medicine prescribed.

EMPLOYÉS.

For the fiscal year ending June 30, 1898, there were 58 persons on the payroll, at a cost of $59,529 28. For the same year there were in attendance 221 pupils. The increase of pupils has been 41, or 22.77 per cent. The increase of employés has been nine, or 18.37 per cent. The gross increase of pay has been $6,776 03, or 20.32 per cent.

Teachers are employed five hours a day during the academic year. Domestic help is on duty from the time the children get up in the morning until work is done at night. Outside help is expected to be on duty whenever required. Discharges are almost unknown. The payroll shows the time when such changes take place.

The accommodations for different employés are located in the various buildings where their duties call them.

The payroll shows the employments, and there have not been enough discharges in the last twenty years to fill one page of the book.

During the summer most of the butter consumed is furnished by the

dairy. The institution produces nearly all of its vegetables, except potatoes, and much of the fruit is raised on the place.

FURNITURE.

The furniture of the institution is such as is usually found in schools of this kind, is simple in character and inexpensive.

LIBRARIES.

There are two libraries, one consisting of books of reference, literature, science, and fiction for those who can see, numbering about 2,000 volumes; the other, books in line letters, New York point, and Braille, numbering about 500 volumes.

RELIGIOUS SERVICES.

Religious services are conducted entirely by the Principal or the teachers. Father Phillips, from Berkeley, has the use of one of the schoolrooms every Thursday afternoon for the Catholic children, where he gives them religious instruction.

PUNISHMENT AND CORRECTION.

Punishments and corrections consist generally of deprivation of privileges, and such punishment as would be used in any well-regulated family. If corporal punishment should be thought necessary by the Principal, to whom all such cases are referred, he alone administers it.

The educational advantages offered are on a par with those of the grammar and high schools of the State.

Pupil labor cannot be used either in clerical or administrative departments, for the reason that it takes all their time to get an education.

SUPPLIES, ETC.

We advertise by sending printed schedules to different dealers. For coal, the schedules are issued August 15th, and call for bids for a year's supply. The schedules for meat are generally by the month.

The total per diem capita of 14.34 cents is the cost of food, its preparation and service for the household.

CONTINGENT FUND.

Until four years ago the contingent fund was kept in the dissection book, which shows the total expenditure of every kind. It is still shown there, but in addition, for convenience of reference, the Principal keeps a segregated account of all receipts and expenditures pertaining to this fund. July 1, 1894, there was a balance in its favor of $3,853 42. There has been received $10,113 25, making a total of $13,966 67 to be accounted for, as follows:

Permanent improvements	$6,219 61
Buildings and repairs	477 51
Incidentals	2,588 21
Total	$9,285 33

Leaving a balance on hand of $4,681 34.

PER CAPITA COST PER ANNUM.

Item.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Salaries and wages	$163 01	$177 11	$170 45	$183 88	$176 86	$171 82	$180 00	$178 06
Groceries and provisions	47 80	40 31	43 03	35 87	33 61	30 71	35 77	36 63
Medicine	98	71	80	44	47	51	76	58
Clothing	3 87	3 63	3 85	3 59	4 91	3 96	4 50	4 15
Furniture	5 08	5 35	6 75	5 05	8 41	6 96	8 69	2 81
Fuel, light and power	22 57	20 32	14 43	19 25	12 55	11 75	12 45	13 90
Farm and dairy	10 26	11 63	11 54	7 04	8 30	6 71	6 44	7 99
Stationery	1 84	2 02	1 19	1 05	1 30	1 34	3 82	1 21
Telegraph, telephone and expressage	1 62	1 46	1 43	1 54	1 87	1 12	1 33	71
Sundries	15 38	13 18	26 47	26 36	23 35	28 21	47 89	29 20
Totals	$272 35	$275 54	$279 94	$284 07	$271 63	$263 09	$301 65	$275 24

HOME FOR ADULT BLIND.

LOCATION.

The Industrial Home of Mechanical Trades for the Adult Blind is situated in the City of Oakland, County of Alameda, and contains five and one half acres of land, and is on the electric car lines direct to Oakland. The institution was established in 1885, purchased about one year after for the sum of $25,000.

BOARD OF DIRECTORS.

The management of the Industrial Home is under the direction of five Directors, who serve without compensation or mileage. The members of the Board are W. T. James, appointed November 11, 1895; John R. Glascock, appointed November 11, 1895; James F. Smith, appointed September 12, 1896; G. M. Shaw, appointed February 23, 1898, and H. O. Trowbridge, appointed May, 1896.

BUILDINGS.

The cost of the buildings is as follows:

Dormitory No. 1	$8,450 00	
Dormitory No. 2	5,972 80	
		$14,422 80
Superintendent's cottage		2,460 00
Workshop		2,500 00

IMPROVEMENTS, ETC.

Improvements, etc., on buildings to date amount to $5,609 67.

VENTILATION.

The ventilation is good for the class of buildings, there being an adequate number of windows and transoms.

FUEL.

The fuel, which is coal, is most efficient. The daily cost is about $2 46, and the yearly cost is about $898 73.

HEATING.

The buildings are heated by a hot-water system, each building having its separate plant. The furnaces are poorly constructed. A more economical system would cost $1,000.

WATER.

Water is supplied by the Oakland Water Company at a monthly cost of $20.

LIGHT.

Gas is used for lighting, and is supplied by the Oakland Gas Ligh and Heat Company, at an average cost of about $30 per month.

LAUNDRY.

There being no plant for laundry purposes, the washing is given out, at an annual cost of $1,200.

SEWERAGE.

The sewerage of the institution is connected with the city sewer system. Modern waterclosets empty into the main lake sewer.

BATHING

The bathing-tubs are old and in constant need of repairs.

POWER

The only power required at present is for running a scraper in the broom factory, which power is furnished by a gas engine, at an average monthly cost of $7 35.

CAPACITY.

The capacity of the sleeping apartments is for 100 inmates, although 107 inmates are accommodated. There are three wards; two dormitories are used for the male inmates, and the ward in the main building is used for the accommodation of the female inmates.

There are present 107 inmates, 20 of whom are females, and 87 males. About 60 per cent of the inmates are of foreign birth.

The cost per annum, taking as a basis the year just ending, is $27,383 93.

MANUFACTURES.

The only goods manufactured are brooms, and in this capacity there is an average of 74 inmates employed. The present force of employés is sufficient for conducting the institution.

The value of stock on hand will not exceed $200. The shop is well equipped with machinery (hand) for broom-making.

FURNITURE.

The furniture in the male dining-rooms and the officers' dining-room is nice and plain. The officers' quarters are all furnished at the expense of the officers.

The kitchen is very complete. The cost of furniture for each sleeping-room for two persons is about $18.

RELIGIOUS SERVICES.

The inmates are allowed to attend their several churches, there being no regular religious services connected with the Home.

EMPLOYMENT.

The only employment by inmate labor is a stenographer in the Superintendent's office.

SUPPLIES.

Contracts are given by the Board of Directors to the lowest responsible bidders, at a public letting thereof.

MAINTENANCE.

The annual cost of maintenance for officers, employés, and inmates is $21,000 05; cost per diem, $60.

The references required of employés to procure situations are good character and capability to perform the duties of the position applied for.

ACCOUNTS.

The present system of accounts is unsatisfactory and can be greatly improved upon.

PER CAPITA COST PER ANNUM.

	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Food for inmates	$82 11	$88 84	$91 41	$76 07	$79 63	$80 59	$69 06	$73 75
Food for officers and employés	68 71	72 85	75 44	64 75	66 36	66 08	5 71	60 97
Furniture	55	1 99	7 67	4 52	38	5 25	3 98	2 28
Fuel	6 88	7 98	7 67	6 79	8 88	8 79	8 44	7 99
Light	6 68	5 08	4 56	5 05	6 54	5 46	3 69	3 25
Telephone	78	76 76	75	62	70	92	1 49	1 45
Salaries	108 71	114 83	115 80	106 09	104 47	112 23	136 34	101 74
Sundries	37 65	44 17	38 16	26 10	28 94	28 41	27 60	19 40
Medicine	8 13	6 15	5 02	4 10	3 84	4 31	2 99	2 45
Stationery	-------	31	-------	25	14	42	42	1 45
Clothing	-------	-------	31	-------	98	53	36	29
Totals	$320 20	$418 96	$345 79	$292 34	$300 86	$311 19	$260 38	$275 02

Total amount of money received from the State for support only, up to June 30, 1898, is $518,504 99. This does not include what has been appropriated for buildings and improvements.

The total amount received since the institution was established for sales and all other sources other than State, up to and including June 30, 1898, was $195,084 27.

For the fiscal year 1897–98 the cost was:

For fuel	$836 13
For light	342 75
For power	66 75
For water	170 00
For maintenance	9,779 79

The per capita cost per annum, 1897–98, was $91 40, and per day, 53.73 cents. The payroll for 1897–98 was $10,683 04. The cost of laundrying was $1,200. The cost of lighting for the year was, gas, $342 75; coal oil, $18.

Total amount of receipts from all sources, excepting State support, for the fiscal year 1897–98, was $10,927 22.

CALIFORNIA HOME FOR THE CARE AND TRAINING OF FEEBLE-MINDED CHILDREN.

LOCATION.

The California Home for the Care and Training of Feeble-Minded Children is located at Eldridge, one mile south of Glen Ellen and six miles north of the town of Sonoma, on the lines of the California Northwestern Railroad and the Southern Pacific Railroad, from the stations of which lines the main building of the institution is about two fifths of a mile distant.

HISTORY.

The work of caring for feeble-minded children in California originated from the efforts of Mrs. F. H. Bentley, wife of Rev. Robert Bentley, of Berkeley, and Mrs. Julia M. Judah, wife of Henry R. Judah, of San Francisco, who, early in the winter of 1880, began actively the labor of establishing a private association for the care and training of the feeble-minded. Two years previously, however, Prof. Warring Wilkinson, Principal of the Institution for the Deaf, Dumb, and the Blind, at Berkeley, had become convinced of the necessities along these lines, and had urged action to secure concerted effort. Enlisting the active coöperation of Prof. Wilkinson and Dr. A. P. Gibbons, public opinion was stimulated, and a meeting of influential people held at the Palace Hotel, San Francisco, July 31, 1883. The result of this meeting was to establish a private association for the care and training of feeble-minded children.

Articles of incorporation were filed August 7, 1883, and the following were selected as the first Board of Directors: Hon. Leland Stanford, Hon. Washington Bartlett, Capt. Charles Goodall, Louis Gerstle, Asa Harker, Capt. R. Ainsworth, Col. Wm. Harney, Rev. Robert Bentley, Mrs. Ariel Lathrop, Mrs. E. B. Crocker, Mrs. A. H. Fisher, Mrs. W. H. Howard, Mrs. Chancellor Hartson, Mrs. F. Miller, Mrs. Julia M. Judah. Mrs. Crocker, Mrs. Miller, Dr. Bentley, and Col. Harney subsequently withdrew, in order that the number should not exceed eleven.

On April 24, 1884, the White Sulphur Springs property, near Vallejo, was obtained. The institution was opened May 22, 1884, with thirty applications for admission. The Legislature passed a bill to appropriate $25,000 for the purchase of suitable property, and $20,000 for the support of the home for the ensuing two years. The private association was soon after this disincorporated, and its effects transferred to the State Board appointed by the Governor, consisting of Mrs. Ariel Lathrop, president, Mrs. C. F. Bigelow, Mrs. Lucy E. Higgins, Mrs. Chancellor Hartson, and Col. Harney.

The Home, meantime, had been removed from the White Sulphur Springs, to Fasking Park, Alameda, where it remained until the State

Board selected a tract of fifty-one acres in the town of Santa Clara. Here frame buildings were erected to supplement those already there, and all made in readiness for the re-opening, which occurred December 10, 1885.

The Legislature of 1889 passed an Act authorizing the selection of a more commodious site than the one at Santa Clara, and the appointment of two commissioners to act with the then Board of Trustees as a board or commission to select such site. The Act also appropriated $170,000 for site and buildings; $15,000 for sewerage, water and improvement of grounds; $15,000 for furnishing the Home, and $80,000 for maintenance for two years.

George W. Gibbs and Capt. Oliver Eldridge, both of San Francisco, were selected by the Governor as additional commissioners, who purchased what was known as the William McPherson Hill ranch, near Glen Ellen, a tract of 1,700 acres. This selection was ratified by the Governor and became the permanent site of the institution.

On November 19, 1890, the cornerstone was laid by the Masonic Grand Lodge, and on the day preceding Thanksgiving, 1891, the institution was moved from Santa Clara.

BOARD OF TRUSTEES.

The Board, as at present constituted, is composed of the following members:

President, Thomas P. Woodward, 12 Sutter Street, San Francisco; appointed November, 1895, vice R. A. Poppe, whose term expired March, 1895.

Col. John T. Harrington, Colusa; appointed October, 1895, vice C. P. Eels, resigned.

Richard R. Reibenstein, Stockton; appointed in October, 1895, vice George W. Gibbs, resigned.

E. W. G. Moebus, Alameda; appointed April, 1898, vice J. J. O'Brien, deceased.

There is at present one vacancy, caused by the death of the late President of the Board of Trustees, Hon. A. P. Overton, April 14, 1898.

Regarding the expiration of the terms of office of the above named Trustees, there seems to be some doubt, owing to the wording of their commissions, the impression being that as they succeeded Trustees who had not yet completed their full terms of service, their terms should be for the unexpired terms. If this be correct, then Messrs. Woodward, Harrington, and Reibenstein should complete their terms in March next. The term of E. W. G. Moebus runs with that of the late Hon. A. P. Overton, and as Messrs. Overton and O'Brien were appointed in March, 1897, for four years, these terms should expire in March, 1901.

The Trustees of this institution receive no per diem nor mileage, but are, under the law, entitled to their actual traveling expenses incurred in attending meetings of the board, and are allowed reimbursement for such outlays of a contingent nature as may have been necessarily incurred in the transaction of State business.

The Secretary of the Board of Trustees is Dr. A. E. Osborne, who is also Superintendent, and who resides at the institution, but is allowed no compensation for his service over and above his salary as Superintendent. For a number of years the Superintendent was by statute made ex officio Secretary of the Board of Trustees. This Act was

finally amended so as to permit of the election of a Secretary by the board, but the Superintendent continued as such Secretary until December 31, 1895, when Wm. P. Edwards was elected, and on his resignation in March, 1898, the Superintendent took the place again.

The Treasurer of the Board of Trustees is John P. Overton, cashier of the Savings Bank of Santa Rosa. He receives no salary or compensation for his services. His term is for one year, being elected at the annual meeting of the Board of Trustees in April of each year.

The Board of Trustees meet in regular session once monthly. Special meetings of the board or committees of the board are frequently held.

The amounts paid on account of the expenses of the members of the board are given in the following table. These sums are paid from the regular "support fund," and are from July 1, 1897, to July 1, 1898:

Thomas P. Woodward	$32 60
A. P. Overton	25 05
R. R. Reibenstein	101 95
John T. Harrington	155 25
Total	$314 85

The statute does not limit the term of the Superintendent or Matron, it being understood, however, that they fill the constitutional term, and with that understanding the Board of Trustees have from time to time reëlected them at the annual meetings of the board. The last election of Superintendent and Matron was at the reorganization of the board, in April last. All other officers and employés, other than the Secretary and Treasurer, hereinbefore mentioned, are appointed by the Superintendent, and hold during his pleasure.

No particular civil service system has been inaugurated, the Superintendent endeavoring to obtain the best available help for the various places. No educational or other test by way of examination is applied to these candidates for position, their general competency securing their retention in service, after a fair and sufficient trial. With the teachers, however, there is an educational qualification demanded, *i. e.*, that they shall be graduates of an approved school, or hold certificates from State or county of a grade commensurate with the duties they assume in the institution.

BUILDINGS.

An appropriation was made, April 6, 1891, of $125,000; $109,682 for the erection of a wing to the main building, known as the "boys' wing"; $5,250 for the erection of an engine-house; $5,973 for heaters and radiators in the boys' wing; $3,150 for radiators and heaters for the hot-water system for the kitchen wing, and the sum of $945 for gas fixtures for the kitchen and dining-room building, laundry and bakery building, and epileptic building.

On February 27, 1893, $98,000 was appropriated for the erection of an additional wing to the main building for the female department of said institution, and to furnish the same and to improve the grounds.

The cost of the buildings to date, including repairs, alterations, sewerage connections, light and heat, etc., are as follows:

Boys' wing	$118,578 92
Girls' wing	85,779 25
Engines and boiler-house	5,228 99
Kitchen and laundry building and manse	125,207 54
Superintendent's residence, grounds, etc.	3,733 73
Total	$338,528 43

There are no buildings in course of construction at the present time, and there are no buildings contemplated based on existing appropriations; buildings contemplated are contingent upon future appropriations.

The buildings referred to above as "boys' wing," "girls' wing" and "kitchen wing" are the three completed sections of the main building as called for by the original plans. This main building is incomplete to the extent of lacking the east block, which would be utilized for connecting the north and south wings, for boys and girls respectively; (these wings being connected by corridors to the kitchen wing) for executive quarters and administrative offices, greatly needed dining-room and school-room space and sleeping-room for officers and employés. The estimated cost of the work does not exceed $35,000.

The laundry building is a detached building, situated a few hundred feet in the rear of the girls' wing, and in the immediate rear of it is located the engine and power-house. It is greatly desired that a new system of heating and ventilation shall be introduced into the home and a more commodious plant erected for the accommodation of the electric light works, boilers, machine shops, etc., as well as for the extension of the laundry work, the present laundry facilities being inadequate for the rapidly increasing needs of the institution. This is also true of the power plant. It is designed to erect a new plant some 1,500 or 1,600 feet to the north of the boys' wing. Legislation has been asked for before for this purpose, and the justness of the claim is recognized by all who are familiar with the situation.

The manse building (for epileptic boys) is situated to the west of the institution some 2,000 feet, and connected by a well-graveled avenue. The accommodation of this building is for sixty patients. It is heated by open fireplaces, well screened and guarded, and ventilated by abundant window spaces in connection with the open fireplaces.

ACREAGE.

The utilization of the acreage is as follows:

Buildings and grounds	15 acres
Vegetable gardens	20 acres
Dairy and pasturage	1,184 acres
Farming proper	300 acres
Orchards and vineyards	151 acres
Acres irrigated	20 acres

Of the above acreage in dairy and pasturage, some three or four hundred acres are mountain land and incapable of use for other than grazing purposes, although parts are heavily covered with timber which could be utilized for fuel.

By a proper system of irrigation a large tract, possibly 100 to 150 acres, could be irrigated at a very small cost, and the expense of irrigation would be reduced practically to a nominal figure if the plan which the Home has urged in the matter of the extension of the water supply were adopted. This plan is as follows: The sources of water on the property are springs and mountain streams, rising at such elevations that the water could be collected by a series of pipes and flumes so as to be retained in a large reservoir or dam some three or four hundred feet above the site of the buildings. Surveys by the State Engineer have demonstrated the advisability of this plan, which would give 125 horse-

power to the institution, and a storage capacity of from 70,000,000 to 100,000,000 gallons.

The total cost of securing such a plant would not exceed $25,000, and the Home would then be in possession of ample water to be used for storage, for fire emergencies, and for motive purposes (running laundry machinery, electric light plant, etc.), and the water which would pass from the motor could then be directed upon the ground, which, according to our surveys, lies admirably for irrigation.

VENTILATION.

The ventilation of the main building is by the Cottier system, the flues opening into compartments under the attic roof, from which the air is discharged through several funnel-shaped appliances. These hoods or ventilators are arranged to catch the breeze or any air in motion which causes a disturbance of the contents of the chambers, thus insuring a movement of air inside the building. This system is essentially a passive one, is as efficacious, and gives as satisfactory a service as any other passive system would. The ventilation of such buildings is, however, an exceedingly important affair, and active or forced ventilation is imperatively needed. There are times when passive ventilation cannot prove satisfactory, the conditions being such as to preclude passive ventilation from changing the air in the various wards and halls. By active or forced ventilation, reference is made particularly to the methods of several leading specialists in this line, *i. e.*, that of having fans worked by machinery to force and discharge the impure air from the interior of the building and to diffuse the pure air suitably warmed into the building. These plans are of two kinds: suction and propulsion, and both systems depend upon the active aid of machinery in connection with steam heat to secure the volume and pressure required to overcome the impure air in the wards, halls, and corridors. Such a system should have been introduced in the Home in the beginning, but for lack of means and other reasons passive ventilation was relied upon.

Such a plant would cost from $10,000 to $15,000, but the saving in fuel would amount to so great a sum, possibly $2,000 a year, that, apart from professional or hygienic reasons in favor of the change, the economic one should be sufficient to warrant the expenditure of this money.

FUEL.

Two kinds of fuel are now being used: Coal, which costs $8 70 per ton laid down at the institution, is used for ranges, for open grates, and for the eight heaters distributed about the buildings in the hot-water system of heating; and wood, which costs $3 75 for four-foot redwood and $4 65 for four-foot pine, and is used in the power-house to generate steam for laundry power and electric light power.

HEATING.

The hot-water system of heating costs from $16 to $20 per day for coal, and the power plant averages from two to three cords of wood for the twenty-four hours, according to the season and the demands upon the electric light plant. An economy in fuel could be secured by the

erection of a new power plant, which would permit the heating of the buildings by steam and a greater economy, were the improvements in the water supply made to allow the use of water as a motive power. As given above, this saving alone, it is estimated, would amount to $3,000 per year.

The heating of the buildings by hot water, as just mentioned, is very unsatisfactory. It is expensive in the matter of fuel used, and the service is far inferior to what it should be; on cold days, the upper floors of the buildings are indifferently heated, if at all, and during the winter months, at all times, there is an element of danger from so many fires being distributed about the different sections and buildings. That the system of heating can be improved admits of no argument, and the improvement suggested is a system of steam generated from a central boiler and plant, and which steam could be generated in the present boilers owned by the institution, wood being used for fuel.

WATER.

Water for the institution is obtained from the springs and mountain streams in the high ground on the western section of the ranch, and is brought to the institution by a gravity system. All the water obtainable is not yet utilized, owing to lack of facilities in collecting and impounding. Under the appropriation given for water and sewerage a water system was put in which has since been found inadequate to the needs of the institution. A new line, therefore, has been laid, of larger capacity, sufficient for some years to come, if the additions to the water system, previously referred to, are made. In that event, the present main, with its reservoirs and detachment basins, can be retained for drinking purposes and domestic uses, and thus prove adequate for further extensions of the institution. The cost of the various mains from the sources to the buildings, and for the sewers from buildings to outlets, is $8,426 19.

With an appropriation of $25,000, an ample supply of water can be procured and conducted to a properly equipped impounding lake, whence, through suitable mains, it may be brought to the buildings for motive power, fire emergency, etc., leaving for domestic purposes the main that now supplies the Home with water.

LIGHTING.

The Home is at present lighted by electricity, the plant having been about a year in operation and costing, all told, $6,404 82. The dynamo is a six-pole, 30-kilo watt, with a capacity of 235 amperes, and the current is furnished at 117 volts. There are fifteen arc lamps in the buildings and about the grounds. The average load carried by the machine is about 450 lights during the early evening hours, falling later to about 200 lights.

The plant has been most satisfactory, and no improvements or changes are contemplated, nor desired. Having but one dynamo, however, subjects the institution to the risk of breakdowns or similar accidents that might result in an absence of light when most needed. The purchase of a duplicate plant, or a plant a little larger than the one now in use, would protect the Home against any such contingency.

Before electricity was introduced, the institution was lighted by gas, the total cost of the plant, including the running of mains and additions and alterations during its time of service, being $3,406 40. The management had hoped to have been able before this time to have secured a purchaser for the gas plant and, with the proceeds, to buy the electrical additions of which the Home stands so much in need.

LAUNDRY.

The laundry is equipped with four Troy washers, two No. 3 washers, one No. C washer, and one brass washer; one 16-inch extractor, one No. 1 dipwheel starcher, one improved power roll wringer, one 16-inch by 75-inch steam mangle; one dry room with 16 compartments, size 12 feet by 12 feet; one furnace for heating handirons, one No. 9 C. & C. shirt-ironer, and the usual facilities found in steam laundries, all of which afford very satisfactory service. Total cost of equipment, additions, and repairs, to date is $3,795 75.

The only additions needed in the laundry are such as will enable the institution to keep pace with the increasing demands. Should a new and commodious power-house be built, double the drying space and one additional washer would be required, at a total cost for the improvement of about $1,000.

SEWERAGE.

The sewage is collected and emptied through a main upon a gravelly and sandy mesa, at a fall of about 60 feet, and distant a quarter of a mile from the institution.

The system of waterclosets used for inmates is the Mott latrine system, automatic flush, with valves to permit of the flushing as often or as copiously as may be desired. The cost of the sewers is given in connection with the cost of the water mains.

BATHING.

The bathing of the inmates is wholly by tubs, the cold water being drawn from the main, and the hot water from the hot-water tanks, all suitably arranged and provided with the necessary safeguards to prevent accidents. Bathrooms are provided, and the patients are detailed regularly for baths. At least two companions or attendants are obliged to be present during the bathing of each and every child. Children of unfortunate or filthy habits are bathed as often as necessary, many of them receiving daily baths, whereas those of cleanly habits receive a thorough body bath once a week.

The changes that should be made in bathing are the equipment of rooms to permit the use of the douche and spray system. Bathing outfits of this class insure a thorough economy in the use of water, are notably hygienic, are easier of administration and are more agreeable to the patient. They are absolutely free from danger, always present in bathing idiots or epileptics in tubs, of accidents from scalding or drowning, especially if the child should have a convulsion while in the water. All defectives should be bathed by some such apparatus, the cost of which compared to the advantages is insignificant.

POWER.

Power is generated and supplied from two 50-horse-power horizontal tubular boilers, that of the laundry being transmitted by a 25-horse-power Ohmen engine, and the dynamo being turned by a directly coupled Buckeye engine. The only alterations to be suggested in the power plant is its abolition and the adoption of water as the motive power.

CAPACITY.

The present inmate roll of the institution is 536. This does not represent the normal capacity of the institution, all the wards being crowded, and many beds placed in the halls and corridors.

The departments, with the dormitories and capacity, are as follows:

Halls.	Sex.	Dormitories.	Capacity.	Sleeping in Corridors and Halls.	Number Occupants.
Bentley Hall	Male	6	132	21	153
Paxton	Male	6	68	5	73
Manse	Male	9	55	6	61
Judah Hall	Female	23	182	5	187
Stoneman Hall	Female	5	60	2	62
		49	497	39	536

Number on parole or vacation at this time is 10 and the average number during the year is from 10 to 15. The percentage of escapes per year is nothing, and the percentage of discharges is 10 per cent per year.

The percentage of nativity of the inmates is as follows:

American born	.91379
English (England and United Colonies)	.036
Russian	.0016
German	.008
Denmark	.0072
Italian	.008
Mexican	.0032
Norwegan	.0032
Swedish	.0016
Switzerland	.0048
Unknown	.0128

Of the total population, 71.3 per cent were born in California.

COST OF MAINTENANCE.

The cost of maintenance per annum, figured on cost of food, clothing, furniture, schooling, etc., is $74,185 85; an average of $160 49 per inmate per year, $13 33 per inmate per month, and 33 cents per inmate per day. This is for all expenses, salaries, etc.

The cost of maintenance per annum, figured on above, including all items and cost of plant, interest at 5 per cent, gives an average of $193 42½ per inmate per year; $16 12 per inmate per month, and 48 cents per inmate per day.

The amount received from pay patients since 1886 to date is as per the following table:

1886	$1,864 45
1887	2,174 40
1888	2,376 00
1889	3,287 25
1890	2,832 15
1891	3,155 00
1892	4,057 65
1893	5,384 67
1894	3,933 50
1895	3,349 25
1896	4,705 25
1897	5,842 00
1898	8,492 45
Total	$51,454 02

PRIVATE CONTRIBUTIONS.

All contributions of money, clothing, etc., to the patients are received by the Superintendent, who receipts for the same on a specially prepared blank, which is immediately forwarded to the donor. An entry of it is made in a specially prepared book and the account passed to the bookkeeper, the money being deposited with the Treasurer, the Superintendent taking the Treasurer's receipt.

When the donations consist of clothing, etc., they are passed to the Matron, after an itemized account of the same has been prepared and an acknowledgment based upon this forwarded to the donor. A duly itemized account is also entered up in a set of books kept for that purpose by the Matron. The accounts are vised by the Superintendent at his discretion, and at least four times a year duly experted by L. Wadham, expert accountant of San Francisco.

All supplies intended for inmates should be given to the Matron, and parents and patrons during their visits are strictly enjoined not to pass anything surreptitiously to inmates, nor to make donations to them of anything of value, unless permission is first obtained from the management, the design being to keep a careful account upon the books of all articles of value brought to the institution for the use of the inmates.

REQUISITIONS.

Requisitions for supplies are made out upon specially prepared blanks by the officer in charge of the stores, presented to the Superintendent for his approval, and, when signed by him, are forwarded to the contractor for the kind of supplies desired or to a house dealing in the class of goods required. The officer in charge of the stores keeps a copy (letter press) of the original and a memorandum of the same upon the requisition stub. When supplies are received, they are opened by the officer designated for the purpose, whose duty it is to see that the article is in quantity and quality in accordance with the terms of the original requisition. He then stamps the original invoice as having been delivered according to the terms and requirements of the requisition, and signs the same with his name or initials. Invoices are sent in triplicate, and are passed by him to the bookkeeper who prepares the monthly schedule of the bills for the Superintendent's approval and transmission to the Board of Trustees at their regular meeting. The

Board of Trustees concurring and approving of said claims, a certificate is made out by the Superintendent and the claims forwarded to the State Board of Examiners with the original invoice, the Superintendent retaining the duplicate and the officer in charge of the storeroom keeping the triplicate. When the State makes payment, the Treasurer notifies the Superintendent of the arrival of the money, and he draws a check upon the Treasurer for the amount of each creditor's claim. The duplicate bill is then forwarded with the check for the creditor's receipt and, when returned, is filed away with other vouchers, the various financial actions involved being duly entered upon the books by the bookkeeper.

INVENTORIES.

Inventories are taken twice a year. The lists are entered in the books kept for that purpose.

No more stock is carried on hand than is estimated to be necessary to cover from two to three weeks' supply. The proper use of articles kept in stock is secured by the heads of departments making requisition upon the storeroom, and these requisitions require the approval and signature of the Superintendent or Matron before they can be filled by the officer in charge of the stores. Up to this time the size of the institution has permitted the Superintendent, or Matron, or such other officer as may be designated from time to time, to have a personal knowledge of the right and economic use of all articles required by the different departments, and special economy has been maintained at a minimum amount of clerical work and supervision. Very little is bought outside of contract supplies, probably not over ten per cent of all the articles bought during any fiscal year being non-contract.

CLINICAL REPORTS.

Clinical reports and histories of the day's doings are kept. These daily reports are handed first to the Supervisor and by him are given to the Superintendent at the end of each day, after whose examination of them they are filed away for reference.

EMPLOYÉS.

There has been no increase in the matter of salaries of employés, but the number per inmate population has decreased during the past three years, as is usually the case in the extension of large institutions.

Accommodations for employés are provided in and about the buildings, but not in connection with dormitories or wards, or where children are kept. Companions and orderlies in the several departments are on duty from 6:30 A. M. to 6:30 P. M. and some to 7 P. M., one half hour being allowed for lunch and one half hour for supper. They have one afternoon off each week for recreation, etc.

PRODUCTION.

Milk is produced by the dairy, to which is devoted a tract of 600 acres east of the railway line, all under the general management of a dairyman, who provides all labor and takes all care of said dairy free of living expenses to the institution on a salary of $75 per month. The quantity of milk delivered averages from 70 to 90 gallons per day, and the num-

ber of cows is 90. No inmates are employed in this department. The dairy is being increased by the addition of young cows to keep pace with the increasing demand for milk.

No inmate labor is employed in the clerical or administrative departments. Inmates are, however, employed in and about the institution in most of the departments, with the baker, shoemaker, engineer, laundryman, gardener, upon the farm, in the fruit department, in the clothes department, in sewing-rooms making clothes, etc. Under the supervision of paid employés, inmate labor produces most of the shoes worn by the inmates, attends to all of the cobbling, and makes up nearly all of the clothing for the girls, uniforms for the boys being bought under contract. All the vegetables for the institution are produced by the labor of the inmates under paid employés, and all the fruit of the orchards is handled by the same labor without the employment of extra farm hands. At present there are some ten or twelve tons of dried fruits of various sorts in stock, which will not, probably, be in excess of what the Home may need for its own future consumption, and which represents the labor of the inmates in the fruit department for the present season. The picking, preparing, drying and packing of fruit affords a profitable and pleasing industry to the inmates. None of the inmates receive salaries.

FURNITURE.

The furniture throughout the institution is of a plain and substantial character, the beds being single, iron, three-ply wire spring double mattresses, the lower usually being of straw and the upper of curled hair or floss, and the bed furniture comprising a liberal supply of blankets with double sheets, counterpane, comfort, etc. The cost of beds for higher grade cases averages from $15 to $19, equipped; $14,974 45, expended for furniture from the special appropriation for that purpose, is included in cost given above, while $15,838 03 for furniture purchased from the maintenance fund is not so included.

FOOD.

The food for inmates is cooked in the general kitchen and distributed therefrom to the general dining-room, accommodating the majority of the males and females of the training school grade, and second to the quarters assigned to low-grade idiotic, paralytic, and epileptic cases, in each of which departments a separate dining-room is maintained. The serving of food from the kitchen to Stoneman Hall quarters (low-grade girls) is by a lift system, the quarters being directly over the kitchen; but the serving of food to Paxton Hall (low-grade boys) and to the Manse (paralytics and epileptics) is by transportation by hand. As great a variety in the food as possible is afforded, the diet consisting chiefly of vegetable foods, the large vegetable garden managed by the institution permitting of the widest range in variety and a constant supply of fresh vegetables the whole year round.

LIBRARY.

The Home possesses no library, but has the nucleus of one, consisting of a few magazines, bound and unbound, representing donations from private parties.

RELIGIOUS SERVICES.

Religious services are held every Sunday in the general assembly room, separate services being maintained for males and females. These services are held by the teachers in turn, are non-sectarian in character, and of such broad undenominational character as best suits the condition of the mixed population. Appropriate songs, hymns, and religious services are indulged in each morning in the school department upon the assembling of the pupils. Before each meal the inmates are taught to ask a simple blessing, wholly within their comprehension and yet appropriate for the occasion.

PUNISHMENT.

The word "punishment" is eliminated, as far as possible, from the system and the word "correction" used, being considered a better term and more appropriate to the demands of the children. These corrections are administered by order of the Matron or Superintendent, and a daily note kept of the same upon the reports filed each day by the officers of the departments.

The percentage of escapes, strays, etc., is about 1 per cent per month. All escapes and strays are returned within a short time after their elopement.

EDUCATIONAL ADVANTAGES.

The educational facilities of the Home consist of some eight or nine schools, including manual training and industrial work, in which children are classified according to their ages and abilities and taught the rudiments of an English education, leading up from kindergarten work to descriptive and physical geography, history, writing, mathematics, etc. With many of the children the results are exceedingly satisfactory, marked improvement being obtained through the methods employed. The educational side of the work must ever remain the most interesting feature and the one upon which the ultimate reformation of the child is to be considered based.

SUPPLIES.

Supplies are advertised for at the beginning of each fiscal year, usually for the whole fiscal period. Occasionally, in view of an uncertain market, contracts for supplies are let for six months, as the best interests of the Home may appear to the Board of Trustees. Schedules are prepared after the exact forms used in other institutions in this State, and calls for proposals are inserted in San Francisco and Sonoma County papers. The schedules are not printed in the advertisement call, but are obtained upon application to the Superintendent.

CONTINGENT FUND.

The contingent fund for the last year amounted to $10,515 49. It is made up of receipts from various sources, sales of junk and produce, payments for maintenance of inmates, etc., and occasional donations, and is applied to support of inmates of the institution and for current repairs and necessary improvements not provided for by legislative enactment.

Contingent Fund Receipts—December 10, 1895, to June 30, 1898.

Fiscal Year ending June 30th.	Maintenance.	Special Donations.	Sales.	Incidentals.
1886	$1,864 45	$25 00	$43 50	
1887	2,174 40		417 80	
1888	2,376 00	725 00	422 58	
1889	3,287 25	1,482 53	6 25	
1890	2,832 15	1,531 15	190 65	$166 66
1891	3,155 00	510 00	1,745 43	14 50
1892	4,057 65	1,074 43	1,770 80	429 49
1893	5,384 67	538 50	2,977 50	455 50
1894	3,933 50	612 50	1,225 04	200 00
1895	3,349 25	847 50	1,651 92	412 50
1896	4,705 25	757 50	272 00	110 71
1897	5,842 00	510 00	324 20	1,216 34
1898	8,492 45	142 25	1,361 19	458 00
Totals	$51,454 02	$8,756 36	$12,408 86	$3,463 70

The totals of which make a grand total of $76,082 04.

ACCOUNTS AND BOOKKEEPING.

In the keeping of accounts a record of all receipts is kept by the Superintendent, who, as the receipts accumulate, deposits the same with the Treasurer. The bookkeeper makes the proper entries from the data supplied from the Superintendent's accounts. Expenditures are covered by check upon the Treasurer of the institution. All moneys derived from the State are deposited with the Treasurer and drawn by the Superintendent's check. No money is kept at the institution, payments of all kinds being made by draft upon the Treasurer.

The system of bookkeeping is entirely satisfactory; it is simple and as efficient as can be under the circumstances. It shows clearly the amount of supplies to each department, and the running expenses of the same. It could be bettered materially by increasing the clerical force.

PER CAPITA COST PER ANNUM.

From July 1, 1890, to June 30, 1898.

	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Salaries	$76 87	$67 88	$65 66	$66 88	$55 13	$59 44	$59 34	$57 67
Furniture and bedding	3 05	15 33	9 14	2 73	7 08	8 00	4 77	2 50
Medicines	2 75	2 81	1 54	2 24	1 28	1 14	1 02	84
Clothing and dry goods	14 00	7 74	7 46	11 46	11 88	11 10	7 82	11 09
Power and fuel	18 92	17 55	12 15	14 24	8 72	10 65	10 63	10 40
Light	3 03	5 58	5 37	4 15	4 14	5 09	4 16	3 86
Farm	4 19	26 12	26 18	27 36	19 76	5 22	5 27	7 94
Stationery	1 02	97	1 74	1 45	1 23	41	81	53
Telephone, telegraph, express and freight	2 29	2 56	1 19	97	78	1 63	2 06	1 18
Food	40 83	50 08	38 96	42 42	35 74	32 13	32 00	35 46
Sundries	25 04	36 84	11 45	8 73	5 60	5 90	15 66	7 29
Totals	$191 99	$233 46	$180 84	$180 63	$149 34	$140 71	$143 54	$138 76

THE VETERANS' HOME OF CALIFORNIA.

Is located near Yountville, Napa County, 55 miles north from San Francisco, on the Napa and Calistoga branch of the Southern Pacific Railroad.

HISTORY.

It was established on the 25th day of October, 1882, and has 910 acres, purchased at a cost of $17,750. The Veterans' Home Association was formed under the statute of March 10, 1882, for the purpose as expressed in the articles of incorporation. The association consists of twenty-five members of the Grand Army of the Republic.

DIRECTORS.

Directors are elected from twenty-five members of the association, in the usual order of expiration of terms of service, five Directors being elected at the annual meeting, and six at the next annual meeting of the association, each Director being elected to serve two years, and are:

Samuel W. Backus, San Francisco	May 8, 1897
Charles H. Blinn, San Francisco	May 8, 1897
Hugh M. Burke, San Francisco	May 14, 1898
Sol Cahen, San Francisco	May 7, 1898
John C. Currier, San Francisco	May 7, 1898
William L. Duncan, San Francisco	May 8, 1897
P. S. Eastman, Calistoga	May 14, 1898
James H. Garrett, San Francisco	May 7, 1898
Sidney J. Loop, Alameda	May 7, 1898
A. McMahon, (M.D.), San José	May 8, 1897
William J. Ruddick, San Francisco	May 7, 1898

Directors receive no compensation for the services; their actual traveling expenses, when attending to the business of the home, are audited and allowed.

The Secretary is John Jay Scoville, of San Francisco; salary, $150 per month. The Treasurer is John C. Currier, of San Francisco; salary $75 per month.

During the year ending June 30, 1898, there were seventeen meetings of the Board of Directors, and almost daily meetings of its active committees. Fourteen of said meetings were held in San Francisco, and three at the Home in Napa County.

The total amount paid for mileage, or traveling expenses, of members of the board and its active committees during the year ending June 30, 1898, was $442 70, or an average of $40 24 to each member; such expense was paid from the "general fund" of the Home (not from State appropriation).

The $17,750 used in purchasing the grounds and the $21,306 59 expended in erecting the original and main Home building, insurance, labor on farm, etc., together with $17,500, estimated value of beds, bedding, provisions, live stock, etc., making in all $56,556 59, were donated by various posts of the Grand Army of the Republic, Veterans of the Mexican War, and patriotic citizens generally, before the Home received any aid from State or Government appropriations.

About 200 acres of the farm lie in the valley, along the railroad track, and are well adapted to fruit, grain, and small portion to vegeta-

ble raising. The Home buildings are grouped over about 35 acres of slightly elevated tableland; 650 acres produce no crops, and are covered with a dense growth of small timber and chaparral. There is an orchard, now four years old, consisting of prunes, peaches, and apricots.

BUILDINGS.

In 1883 the first building was completed. The average membership present during the year 1884 was but 42; in 1885, 81; and 129 in 1886. The Veterans' Home in California ranks No. 4 in membership, the wealthy and populous States of New York, Illinois, and Ohio only surpass it in the numbers cared for; and in point of economy of management it also ranks No. 4, only New York, Illinois, and Wisconsin having a record of less cost per capita. Forty-six buildings of the Veterans' Home cost to date, including original, $140,082. There are no buildings in course of construction.

VENTILATION.

The ventilation of the Home building is good, although no particular system has been adopted. The largest buildings, the dormitories, have openings through the walls with registers for admitting fresh air and for the escape of impure air.

FUEL.

Coal is used for all power, heating, and electric lighting purposes, and was delivered at the Home at the rate of $6 75 per long ton for six months ending June 30, 1898. A small quantity of wood is used for baking, and in the general kitchen, also during the winter for heating small buildings. The total amount and value of coal and wood purchased during the last fiscal year are:

Coal, 888.8 tons, at $6 75	$6,000 08
Wood, 135.45 cords, at $5	677 25
	$6,677 33

Or an average daily cost for fuel of $18 29 for all purposes.

HEATING.

The buildings are heated by the single-pipe, low-pressure gravity, automatic return system (steam), basement circulation, with direct radiation at five pounds pressure. The system seems perfect, and gives satisfaction. Total cost of entire system up to date is $6,435.

WATER.

The water supply of the Home, for fire and domestic purposes, is derived from springs. The water is stored in reservoirs, the largest of which holds 200,000 gallons, having an elevation of 250 feet above the buildings.

To obtain water for irrigation, sprinkling, and for a reserve supply, a rock-filled dam 278 feet in length, 440 feet high, 25 feet wide on top and 100 feet at base has been constructed in the large cañon to the west, having a capacity of 10,000,000 gallons. The system is complete and substantial and in excellent condition, and supplies every building where

water is needed. The total cost of the water system of the Home is $25,081.

LIGHTING.

The Home possesses a complete and satisfactory electric light plant for lighting the buildings and grounds.

The power for running the dynamos is furnished by a 50-horse-power engine in engine-room of laundry building. The whole plant is in first-class condition, and gives perfect satisfaction, and its total cost to date is $4,344.

LAUNDRY.

The Home laundry is located on the first floor of the "laundry and bath-house" building. In 1893 a complete washing machinery plant was placed there, consisting of one 54-inch tubular horizontal boiler. This plant is somewhat worn, but still does good service, and its original cost was $4,650.

REFRIGERATOR AND ICE-MAKING PLANT.

During the year 1897, the Home installed a plant at a cost of $4,245, with a capacity of five tons daily, ammonia receiver, ammonia condenser, ice tanks and accessories.

SEWERAGE.

The sewerage system of the Home consists of a main line 1,550 feet in length—starting from the administration building—and about 3,000 feet of lateral branches leading into it from the different resident portions of the grounds, making 4,550 feet in all, of 6-inch ironstone pipe.

All the sewage of the Home, after passing through the main sewer, is carried to the nearly level ground to the east, and is distributed through movable pipes, over the orchard and cultivated land, where it becomes entirely absorbed. The entire system is free from odors and gases, and is satisfactory in all respects.

BATHING.

The main bathing room is on the first floor of "laundry and bath-house" building, is 24 by 62 feet in size, and contains sixteen porcelain lined bathtubs and cold water inlets.

POWER.

Power is generated by two 50-horse-power horizontal boilers.

CAPACITY.

During the month of February, 1898, number of members present and actually cared for was 655. By crowding beds close together in the various wards and dormitories, and by converting the attic of administration building into a dormitory, the membership could be increased to about 45 men. Whole number cared for from date of organization to June 30, 1898, 4,802.

The following is a recapitulation as to membership of the Home since its opening April 1, 1884, to June 30, 1898:

Total original admissions		2,654
Loss: By death	401	
Discharged or dropped	1,583	
		1,984
Membership June 30, 1898		670
Nationality: American born		1,410
Foreign born		1,244

MAINTENANCE, ETC.

In conformity to the requirements of the General Government, in order to enjoy the State aid appropriations, all the receipts and expenditures of the Veterans' Home Association are kept under headings, as prescribed by the Board of Managers of the National Home for Disabled Volunteer Soldiers, and the per capita cost of maintenance is necessarily based upon such requirements.

A detailed and most complete table on maintenance is a portion of the original report on file.

CONTRIBUTIONS, ETC., TO MEMBERS.

No private contributions are received.

Relatives and friends can make visits at any time. Such visits are usually made only in case of severe sickness of members, or to attend their funerals.

In case of members who have wives and children dependent upon them, such pension money as they can save, or such money as they can earn on extra duty, is sent to their dependent families.

ACCOUNTS AND BOOKKEEPING.

The general books and accounts of the Veterans' Home Association are kept by the Secretary, at its headquarters in San Francisco, where the Treasurer also has his office.

The books, vouchers, and accounts of the Secretary and Treasurer, and the books of bank deposits, are examined by the Auditing Committee each month, and the Treasurer's statement of cash on hand is verified by comparison with the amounts on deposit, as certified to by bank officials.

INCOME AND REVENUE.

Besides the money received from State appropriation ($150 per year for 300 members only, since 1893), the General Government appropriates $100 per annum for every member actually present and cared for. The Home also derives a small income from the profits of sales in its "canteen," and from slight donations made by members themselves toward a fund providing amusements, care of billiard-room, etc. These two sources of revenue are known and constitute the "Post Fund" of the Home.

SUPPLIES.

All supplies of whatsoever nature needed for the Home are bought on requisitions, and are kept on file in the Secretary's office in duplicate.

Inventories of Home property are taken every six months.

Supplies were first furnished the Home under contracts, commencing July 1, 1895, since which time all the leading standard articles, the demand for which could be determined in advance, have been so furnished. The total amount of goods purchased under contracts average about eighty-five per cent of the whole; non-contract goods, fifteen per cent. Such contract goods are mostly purchased in San Francisco, and contractors deliver same at Yountville, the railroad station of the Home.

CLINICAL RECORDS.

The surgeon in charge keeps a complete record by name, company, ward, and regiment of every veteran treated by him. Such record shows nature of ailment, treatment, and final results.

EMPLOYÉS.

During the earlier years of the Home the greater portion of the labor was performed by the members, who were paid therefor at the rate of from twenty to fifty cents per day, according to the nature of the employment. While much of the labor is still performed by the members, there is a growing necessity for the employment of civilians year by year, and at a higher rate of wages.

The following table shows the members present and cared for, total payroll of employés, and per capita cost of same, and total cost per capita of pay of all employés and officers, during fiscal year ending June 30, 1891, to 1898, inclusive:

Year Ending June 30.	Members Present and Cared for.	Total Amount of Employés' Payrolls.	Per Capita Cost of Same.	Total Amount of Officers' Salaries.	Per Capita Cost of Same.	Total Per Capita Cost of Payrolls and Salaries.
1891	232	$4,094 30	$17 65	$5,200 00	$22 41	$40 06
1892	334	5,192 83	15 55	5,675 00	17 00	32 55
1893	411	8,715 02	21 20	6,035 00	14 68	35 88
1894	420	7,008 02	16 69	5,700 00	13 57	30 26
1895	442	10,309 84	23 33	5,775 00	13 07	36 40
1896	533	12,307 98	23 09	6,000 00	11 25	34 34
1897	600	14,447 81	24 08	6,450 00	10 75	34 83
1898	624	14,099 52	22 59	7,350 00	11 78	34 47

Increase of membership, 1891 to 1898 268 per cent
Increase per capita cost of employés' payroll 12 $\frac{8}{10}$ per cent
Decrease of per capita cost of officers' salaries 52 $\frac{61}{100}$ per cent

Recapitulation of Salaries and Payrolls, as shown for June, 1898.

Salaries of officers, Secretary and Treasurer	$225 00
Salaries of officers of the Home	475 00
Civilian payroll	425 00
Members, extra duty payroll	712 52
Members, "Post Fund" payroll	85 00
Total	$1,922 52

Employés are hired or put to work as occasion demands, and are discharged or relieved from duty when their services are no longer required or are unsatisfactory.

PRODUCTION OF MILK, ETC.

Farm products, manufactures, etc., during the year ending June 30, 1898, amount to $14,430 29.

NATURE OF FURNITURE, ETC.

Members are provided with neat lockers for keeping their personal effects, change of clothing, etc. The officers' residences are plainly furnished, and provided with all housekeeping conveniences.

FOOD, HOW COOKED AND SERVED.

Food is served by waiters (members of the Home), and in a neat and expeditious manner, and upon well-appointed tables (no tin cups, tin plates, iron fork, knife or spoon régime obtains in the Veterans' Home), in a lofty, well-lighted dining-hall, 160 feet long by 48 feet wide, and with an officers' hall adjoining, 34 by 40 feet. Dining-hall of hospital is a bright, cheerful room, 55 feet by 40 feet.

LIBRARY.

It consists of some 1,758 bound volumnes, 504 unbound magazines, besides 500 volumes of damaged or imperfect books stored in the basement.

RELIGIOUS SERVICES.

No regular chaplain resides at or receives compensation from the Home. Religious services, however, are held every Sabbath day in the large assembly hall, alternately by an Episcopal clergyman and a Catholic clergyman, both from Napa; the Salvation Army also holds meetings at the Home every two weeks.

ADVERTISING FOR SUPPLIES.

Short advertisements inviting bids for furnishing the Home with supplies under contract are made twice each year, in time for entering into contracts in January and July of each year. Such advertisements are made for at least two weeks in newspapers published in San Francisco, Sacramento, and Napa. About 85 per cent of all supplies are bought under contract.

THE OFFICERS OF THE HOME

Maintain themselves, as regards food, clothing, and servant hire. The cost of maintenance of civilian employés, food and bedding only is included in the figures of cost of maintenance, rations, household, etc., of members.

Recommendations as to good character and evidence of ability to fill positions sought are required of applicants for same. No regular course of examination is necessary with such help as is required at the Home.

CONTINGENT FUND.

The Home has no contingent fund. Since the opening of the "canteen," in 1893, the profits from sales therein have amounted to $20,422 99. In cases of necessity, such as delay in receipt of appropriation, or for special purposes, use has been made of this fund. Some $7,000 was applied to the construction and fitting up of the Assembly Hall, or Amusement Hall, and the billiard-room of the Social Hall building. The entire cost of the ice plant, $4,245, was paid from such fund. New operating-room, new operating-tables, and instruments,

electric light examination battery, 110 voltage, cautery, etc., and an addition containing a reading and smoking-room, and a phthisis ward, and many sanitary improvements in the hospital, have been paid for from such fund, as well as services of oculist and aurist for the old men, and special nurses for the incurables. Also complete brass-band and string instruments.

BOOKKEEPING, ETC.

The system of bookkeeping in vogue, both at the headquarters in San Francisco and at the Home, is complete, and is thoroughly adapted to all the requirements and needs of the Home.

PRECAUTIONS AGAINST FIRE.

In each company there is a fire brigade, drilled in handling the hose and reels attached to or in the various buildings, as well as the hose on carts located at convenient points on the grounds.

The various buildings and their contents are kept insured against loss by fire to the extent of $100,000. The cost of same is set forth in detail in a statement filed with this committee:

Cost of real estate, buildings, permanent improvements	$231,760 00
Cost of furniture and fixtures of buildings	45,641 00
Cost of farming utensils, value of live stock, etc.	9,105 00
	$286,506 00

Cost of fuel, last fiscal year, 1897–98, $6,677 33.

Total cost of sewer system, $3,650.

Receipts from all sources since the establishment of Home, $985,259 57.

Receipts from all sources, excepting State support, fiscal year ending June 30, 1898:

United States appropriation	$62,550 00
Post fund sales, net	6,017 26
Sundry sales	2,170 51
	$70,737 77
With State appropriation	45,000 00
Total	$115,737 77

STATE HOSPITALS.

AGNEWS STATE HOSPITAL.

LOCATION.

Is located in Santa Clara County, 6 miles north of San José, on the South Pacific Coast Railroad (narrow-gauge), or 3 miles from the Southern Pacific Railroad depot at Santa Clara. It is 3 miles to tidewater on the north, and 3 miles to Milpitas on the east.

The Board of Managers consists of five members. They are J. R. Curnow (chairman), of San José; Isaac Upham, of San Francisco; O. A. Hale, of San José; F. H. Gould, of San Francisco, and Ed. White, of Watsonville, who attended their first meetings, as follows: Manager Hale, April 10, 1889; Manager Upham, November 8, 1893; Manager Gould, December 11, 1895; Manager White, December 11, 1895, and Manager Curnow, February 19, 1896. Managers Upham and Hale were reappointed for another term in October, 1897.

The members of the board receive no mileage, but $10 for each meeting they attend, traveling and incidental expenses.

The secretary to the Medical Superintendent receives $150 per month, and resides at the institution. The Secretary and Treasurer of the Board of Managers receives $100 per month, and resides at San José.

The regular meetings of the Board of Managers are held on the second Wednesday of each month.

HISTORY.

The original tract of land consisted of 275.13 acres, and was purchased in 1887, at a cost of $55,000. In April, 1897, 56.87 acres were purchased, at a cost of $7,108 75, making the total cost for 332 acres, $62,108 75.

ACREAGE.

The land is used as follows:

For pasture	220 acres
Flower garden and grounds	20 acres
Potato and beet grounds	27 acres
Vegetable garden	27 acres
Orchard	16 acres
Berry ground	6 acres
Farm buildings, yard, and cemetery	16 acres

There are irrigated 220 acres, at a small cost, from hospital artesian wells. The cost of repairs on wells and for the time of one man would probably amount to $600 per year.

The buildings, complete, cost $623,195 81.

Those under course of construction are two cottages for convalescent

patients. They are to be paid for out of the contingent fund. No buildings are in contemplation.

The buildings are arranged in three connected departments, and are the administration building, and the wards—male and female. The engine-room and the laundry are within a hundred feet of each other and about the same distance from the main buildings.

The system is very satisfactory. The hospital is at present crowded, and a transfer of patients is desirable. The new cottages will accommodate one hundred patients.

VENTILATION.

The system of ventilation is by flues placed in brick walls leading to attics; each flue connects with a large pipe, which leads to small towers on roof. It is not satisfactory, and is about half complete, but what there is, is in good condition. It could be improved by placing a fan system in basement for heating and ventilation. (The estimated cost is given under heating.)

FUEL.

Roslyn coal and redwood are used for power, heating, and electric lights. At present price, it is efficient. Roslyn coal costs $6 75 per ton, and redwood, $3 50 per cord. Conditions and supply are good. A change to pine wood, at $4 75 per cord, would be more economical. The daily cost, on an everage, is about $20. For the year 1897, the total cost of wood and coal was $7,647 23.

HEATING.

The heating is by hot air and steam direct. The steam is furnished through a 10-inch pipe leading from boiler-room to basement of buildings, through 4-inch pipe at entrance ends. In basement of each building there are about twenty steam packs or radiators; the cold air passes through the steam packs and is heated passing through tin-lined flues in brick walls. The system is about half complete, but what there is, is in good condition. It could be improved by placing fans in basement, connecting large tin air-conductors from fan to steam packs and forcing the air through the steam packs. In winter it could be used for heating wards; in summer, for furnishing cool, fresh air. Estimated cost, $10,000.

WATER.

The water is furnished by an artesian well 785 feet deep and 10 inches in diameter. It supplies over 600,000 gallons in twenty-four hours. The pressure is 21½ pounds per square inch, and the water raised 40 feet high, at a temperature 81°. It flows into a reservoir holding 119,000 gallons, and from there is pumped into tanks in the buildings. The five mains and well cost about $6,000. The system could be improved by taking out ten of the tanks now in the buildings, which are a great source of trouble, as they are controlled by unreliable float valves, and erecting a tower on ground outside of buildings. As it is, if a fire were to start under the main tanks in the buildings, there would be no fire protection inside of buildings, whereas, with the tower there would always be ample protection. Estimated cost of the change is about $4,000.

LIGHTING.

The light is furnished by a full and complete gas plant and a 600-light direct-system electric light plant. The electric system is not complete, as the administration building is the only one wired and fitted with electric-light fixtures. The gas and electric-light plants cost $22,122 60. Both plants are in good condition. The system could be improved by wiring and fitting the buildings, at an estimated cost of $5,000.

LAUNDRY.

The laundry's present condition is fair, but could be improved by rebuilding driers, and rooms suitable for drying purposes would prove more economical in fuel. Estimated cost, $2,000.

SEWERAGE.

The sewerage plant consists of a 12-inch sewer extending to tide-water, a distance of about three miles. The system is perfect, and cost $15,194 55, is in good condition, and cannot be improved. Waterclosets are automatic flush system.

For the bathing of male patients there is a large swimming-tank, back of the male wards. It is 50 by 20 feet, is built of brick and concrete, and has overhead shower baths. The tank is filled from the artesian well, temperature 81°. The system is perfect. The tank and building, complete, cost $2,400. System could be improved by building one for the female patients, at an estimated cost of $1900.

POWER.

The power consists of four Heine boilers of 100 horse-power each, two No. 9 Hooker pumps for furnishing water to building, one Hooker pump for fire purposes, two 300-light dynamos, and one 60 horse-power Ball engine, one 10 horse-power Nagle engine for ice machine, and one 12 horse-power New York safety engine. All are in fair condition. The cost was about $35,000, and at present no improvements are needed.

CAPACITY.

The capacity of the hospital at the present time is 1,000 patients.

There are eight male and six female wards, all in use. A ward could be made at the farm house for the patients who work on the farm, at an estimated cost of $2,000.

PATIENTS.

At the present time there are 946 patients—549 males and 397 females. There were 73 on parole, June 30, 1898. There is no record day by day of the number on parole.

Very few people of other states and countries are now received as patients. No record of the hospital shows the number, and many of the commitments do not state the nativity of the patients.

The percentage of cures to admissions, by years, is as follows :

1890	22.19%	1894	28.21%
1891	24.82	1895	29.18
1892	27.25	1896	34.35
1893	25.40	1897	24.52

The percentage of escapes on whole number treated, by years, is as follows:

1890	1.33%	1894	.2%
1891	.4	1895	.1
1892	.1	1896	.2
1893	.2	1897	.6

The percentage of discharges on whole number treated, by years, is as follows:

1890	16.15%	1894	8.71%
1891	13.80	1895	7.52
1892	13.70	1896	12.23
1893	14.72	1897	8.84

The total cost for maintenance for the fiscal year was $121,168 12.

FUNDS OF HOSPITAL.

Money is kept on deposit with the Secretary and Treasurer of the Board of Managers. An amount of $200 is retained by the Medical Superintendent, which is drawn, as needed, by the Matron or Supervisor. Money is received by the Secretary from the Medical Superintendent. Clothing by the Matron and Supervisor.

Visits to patients are permitted every day between the hours of 10 A. M. and 4 P. M.

The amounts received from pay patients by fiscal years are as follows:

From January 1, 1890, to July 1, 1890	$1,185 00
Fiscal year ending June 30, 1891	5,115 00
Fiscal year ending June 30, 1892	5,955 00
Fiscal year ending June 30, 1893	8,163 50
Fiscal year ending June 30, 1894	8,505 00
Fiscal year ending June 30, 1895	8,220 00
Fiscal year ending June 30, 1896	8,700 00
Fiscal year ending June 30, 1897	7,351 75
Fiscal year ending June 30, 1898	8,172 00

ACCOUNTS AND BOOKKEEPING.

All money received at the hospital is promptly turned over to the Secretary of the Board of Managers, and his receipts are carefully preserved. Expenditures in the steward's department are kept in the stock book and the department register. The disbursements in the stock book must correspond with the entries in the department register. Requisitions are made out and the stubs kept in the Medical Superintendent's office. They are made on the steward, who files them with receipt of party drawing supplies. An inventory of the steward's department is taken the first of each month, and kept on file. The control of stocks is with the heads of the respective departments. All undistributed supplies are in charge of the steward. Supplies which have been issued and are still on hand are in charge of the head of the department to which they have been issued.

SUPPLIES.

For the last fiscal year the percentage of contract goods was 76 per cent. Previous to that time, non-contract and contract supplies were not separated. For the last fiscal year the percentage of non-contract goods was 24 per cent. Most of the supplies are purchased in San Fran-

cisco, Sacramento, Stockton, and in San José, and are delivered at the hospital. The accounts of money received are kept by the Secretary of the Medical Superintendent, and the account of clothing is kept by the Supervisor and Matron.

CLINICAL RECORDS.

Clinical records are kept by blanks as provided by the State Commission in Lunacy.

EMPLOYÉS.

Per cent of employés to patients, by years, is as follows:

1890	14.48%	1895	11.17%
1891	13.04	1896	11.13
1892	11.98	1897	11.58
1893	11.24	1898	11.49
1894	10.77		

The increase in the payroll, year by year, is as follows:

1890	$3,547 00	1895	$4,938 00
1891	3,983 00	1896	4,975 00
1892	4,378 00	1897	5,161 00
1893	4,652 00	1898	5,133 00
1894	4,708 00		

The increase in the payroll is due to the additional number of patients.

All employés are working under the civil service law, the rules of which have been observed for all positions since June, 1897. The effect is a more intelligent class of employés and more satisfactory work.

The annual payroll amounts to $50,376.

A record is kept of all employés discharged, giving name, date, and cause. Since May 12, 1897, there have been fifteen employés discharged. The causes are as follows: Insubordination, cruelty, dissipation, profanity, non-citizenship, fighting, and one for selling his position.

The accommodations for officers and employés are good.

The attendants' rooms are in the wards; employés in the administration department have their rooms in the administration building; those on the farm sleep in the farm house, and other employés have rooms over the laundry. There are three dining-rooms for employés, one for the officers, and one for the male and female employés, respectively.

Attendants are on duty twelve hours; other employés, eight hours a day. Two weeks a year are allowed all employés for vacation during the year, and one day each month.

The Supervisor and Matron keep the record, in their respective departments, of the time the employés are off duty. Discharges and the causes thereof are kept in accordance with the new lunacy law.

PRODUCE.

The average monthly production of milk for the last fiscal year was 3,176 gallons. All the vegetables, ice, milk, poultry, stock beets for cows, pork, fruit, and about one third of the hay used, are produced at the hospital. At the farm three men are employed, two men at the dairy, one in the stable, two in the vegetable garden, and two on the grounds.

EMPLOYMENT OF PATIENTS.

The following table shows the number of patients employed in the various departments during the last year:

Departments.	Male.	Female.	Total.
Bakery	8		8
Barber	3		3
Engine-room	4		4
Carpenter	2		2
Dining-room	50	40	90
Dormitories	36	30	66
Fancy work		25	25
Kitchen	10		10
Farm	35		35
Garden (vegetable)	5		5
Blacksmith	1		1
Grounds and florist	15		15
Hall work	20	20	40
Laundry	20	45	65
Office and halls	10	12	22
Painter	2		2
Sewing-room		50	50
Storeroom	2		2
Shoemaker	1		1
Stables	5		5
Upholsterer	3		3
Totals	232	222	454

FURNITURE.

The furniture in dining-rooms consists of tables, benches, and chairs. The table equipage consists of plates, cups, and saucers, platters, pitchers, vegetable dishes, spoons, knives and forks, except in the "violent" wards.

In the corridors there are pictures on the walls, tables, chairs and settees, and in some of the best wards, carpets.

The single rooms are furnished with iron bedsteads, woven wire mattresses, floss mattresses, two pair of blankets, two sheets, floss pillows, pillowslips, bedspreads, strips of carpets, and a few tables and chairs.

The officers' quarters are in the administration building, and the rooms contain plain furniture and carpets. The Superintendent and assistant physicians have each four rooms, bath and pantry. The steward, supervisor, and matron have single rooms, furnished with plain furniture and carpet.

The beds in the dormitories are of the same kind as those in single rooms. Attendants' rooms contain bed, spring mattress, two pairs blankets, sheets, pillowslips, pillows, and bedspreads, three chairs, small table, washstand, toilet articles, mirror, and strip of carpet.

FOOD.

The food is cooked by steam and coal ranges, also in bake ovens. It is taken by car to the elevators, which lift it to the ward dining-rooms. The food supplies are the articles on the schedule for supplies, to which must be added the fruit, vegetables, milk, pork, eggs, and poultry raised on the farm.

LIBRARY.

The library consists of about four hundred books and several hundred magazines, part of which have been purchased and part donated. Patients who desire books are allowed to come to the library and select for themselves. The name of the patient and book are noted in a book for that purpose; when the book is returned, it is checked off and another given in exchange, if desired.

RELIGIOUS SERVICES.

There are both Catholic and Protestant services, the latter nearly every week; the former services once a month. The priests visit the patients every week.

PUNISHMENTS.

There are neither punishments nor corrections.

EDUCATION.

No educational advantages are offered.

Inmate labor is employed very little, if at all, in clerical and administrative departments.

ADVERTISING FOR SUPPLIES.

Supplies are advertised for once a year, in June, or as directed by the State Commission in Lunacy. The last two terms were for six months. Schedules for advertising are made out here and submitted to the State Commission in Lunacy, for their approval. The amounts of the schedules are based on the amounts used during the previous term, and as near as possible to actual needs. The manner of advertising is by short notice.

COST OF MAINTENANCE.

It is impossible, under the present system, to give the annual and per diem cost of maintaining (each) employés and patients. A system will shortly be put in operation to ascertain the cost of each dining-room. As it is now, the food for all officers is cooked at the same time, on the same range, as is the case with the food for the employés. There is but one kitchen for the whole institution.

References from reputable citizens are required for employés to secure positions, after they have passed a satisfactory civil service examination. The examination for attendant consists of reading, writing, spelling, arithmetic, geography, and grammar. The examination for Matron and Supervisor is the same as for attendants, but including physiology, care of the sick and insane, also regarding hygiene and diet.

CONTINGENT FUND.

Below are the receipts and expenditures of the contingent fund, as shown by the biennial reports from the time the books were first opened up to June 30, 1898, the forty-ninth fiscal year:

Receipts:		
Pasturage	$408 46	
Fruit and produce	953 54	
Hay	4,431 02	
Wood	38 00	
Miscellaneous	4,498 58	
Live stock, sale of	5,373 88	
Pay patients	63,264 25	
		$78,967 73

Disbursements	$54,017 63	
Cash in hands of Medical Superintendent, revolving fund	200 00	
Cash in Garden City Bank and Trust Company	24,750 10	
		$78,967 73

SYSTEM OF BOOKKEEPING.

We quote from the Medical Superintendent, F. M. Sponogle, as follows: "I consider your system of bookkeeping superior to any I have seen. I do not consider our present system complete. Your system seems to be simple and well adapted for State hospitals."

PER CAPITA COST PER ANNUM.

For the fiscal years ending June 30th, as follows:

	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Salaries	$79 23	$72 30	$64 87	$63 16	$65 18	$65 03	$68 34	$67 26
Food	43 46	42 16	40 25	41 17	36 97	34 30	35 46	30 87
Medicines	1 68	1 43	1 35	1 32	1 72	1 47	1 63	1 21
Clothing	5 22	6 08	5 85	6 24	5 97	4 90	4 94	5 24
Furniture	16 66	3 05	1 35	1 96	2 00	2 26	91	2 07
Light	2 51	2 18	2 21	1 71	1 56	1 38	1 35	1 66
Fuel	1 50	1 37	1 08	1 00	1 21	1 10	1 08	1 13
Power	15 81	11 11	12 09	11 54	10 72	10 43	8 06	8 16
Farm	6 43	4 85	3 06	2 30	2 97	1 98	1 94	3 82
Stationery	07	06	06	08	16	11	03	37
Telegraph, telephone, freight and expressage	39	37	38	28	36	14	32	17
Sundries	26 82	16 39	23 64	11 74	13 40	9 80	12 15	10 61
	$199 72	$161 35	$156 19	$142 50	$142 22	$132 90	$136 21	$135 57

The amount paid in per diem and mileage, for each member of the Board of Managers, during the twelve months ending June 30, 1898, is as follows (paid from the support fund):

J. R. Curnow	$265 05
Isaac Upham	253 05
F. H. Gould	82 35
O. A. Hale	259 75
Ed. White	360 00
Total	$1,220 20

MAINTENANCE.

The estimate for maintenance and repairs for the fiscal year ending June 30, 1899, is based on 1,100 patients, and for the fiscal year ending June 30, 1900, on 1,200 patients, and the amount asked for, per capita per day, is 38 cents.

For the first fiscal year, ending June 30, 1899, $152,570 will be asked for (figured on the above basis); and for the second year, ending June 30, 1900, $166,440; or a total amount of $319,010 for the two fiscal years. This estimate is conditioned on the contingent fund remaining the same as it is now. However, should this fund be transferred to the

support fund, figuring on the same number of patients, 40 cents for each patient, per day, will be required, as follows:

For the sinking of a gas well	$20,000 00
For a storage battery system, to light the wards and administration building with electricity	5,000 00
For new plumbing (sanitary) for the entire buildings, and for new porcelain bathtubs	5,000 00
For modern method of heating the wards	10,000 00
For furnishing and furniture for the wards, and new cottages, also ornamental trees, shrubbery, and plants for gardens around the new cottages	5,000 00
For the construction of a water tower on the grounds	4,000 00
For conducting religious services, and amusements for the patients	1,000 00
Total	$50,000 00

The $5,000 asked for a storage battery system is equally economical, as with the present motor power, electricity without any additional cost could be stored during the day.

The plumbing at the hospital is old, the pipes are within the walls, and therefore unsanitary and impossible of repair, without much damage to the walls. To put in sanitary plumbing will cost about $5,000.

The present system of heating the wards is expensive and unsatisfactory. An improved method, consisting of hot-air pipes, with a system of fans, is needed. This would not only heat the wards to the proper temperature during the cold weather, but could be used during the summer months to cool and purify the atmosphere of the wards. The amount required to perfect this system is $10,000.

The wards and the new cottages necessitate the purchasing of furniture and furnishings.

The water supply system is poor, as the tanks are in the buildings and any accident to them would leave the institution unprotected in case of fire. The construction of a water tower would give a perfect water system, and in no way would the buildings be in danger from overflow or breakage. Four thousand dollars is sufficient to build a water tower.

Religious services and amusements are beneficial and essential to the patients, mentally and physically.

MENDOCINO STATE HOSPITAL.

LOCATION.

Mendocino State Hospital is located in Mendocino County, about 3 miles from Ukiah, the county seat, and the terminus of the San Francisco and North Pacific Railroad.

HISTORY.

The Act establishing a branch insane asylum at Ukiah was passed by the Legislature and approved by the Governor, February 20, 1889. Hon. A. Yell, Hon. T. L. Carothers, and Dr. E. W. King, of Ukiah, Cornelius O'Connor, of San Francisco, and J. B. Wright, of Sacramento, were appointed a Board of Directors to select a site, to erect buildings, and to furnish them for the reception of patients.

On September 7, 1889, the board purchased a tract of land near Ukiah, consisting of 130 acres, together with the unobstructed flow of the waters of South Mill Creek, which furnishes an ample and abundant supply of pure, fresh water for all purposes of the hospital.

Plans and specifications for the asylum buildings were accepted on June 7, 1889, and contracts for a male ward building and connecting corridor, kitchen building, laundry and bakery building, and a boiler and engine house, were let on October 13, 1889.

On January 26, 1891, the board let contracts for the erection of a female ward building; April 2, 1891, the board accepted a contract for furnishing iron pipe and laying same for water supply. In April, 1893, Dr. E. W. King was appointed Medical Superintendent. On December 12, 1893, sixty patients were transferred from Stockton Asylum; on December 14, 1893, sixty from Napa Asylum; and on March 25, 1894, thirty from Agnews Asylum.

BOARD OF MANAGERS.

The members of the present Board of Managers are:

J. W. Seawell, president, of Ukiah; appointed August, 1895.

J. C. Ruddock, of Ukiah; appointed August, 1895.

J. Q. White, of Ukiah; appointed August, 1895.

A. W. Foster, of San Francisco; appointed May, 1897.

M. Gardner, of San Francisco; term expired March 1, 1897; re-appointed about March 18, 1898.

The Managers receive $10 a day for attendance at meetings while in the actual service of the State, also traveling and hotel expenses.

The Secretary and Treasurer of the Board of Managers is W. W. Cunningham, of Ukiah, appointed December, 1895, and his salary, including office rent, is $70 a month.

The Board of Managers meet on the sixth of each month, and hold such special meetings as may be necessary.

The following amounts have been paid in per diem and expenses to the members of the Board of Managers during the twelve months ending June 30, 1898, from the support fund of the hospital:

J. H. Seawell	$717 50
J. C. Ruddock	900 50
J. Q. White	723 00
A. W. Foster	465 00
M. Gardner	724 80

ACREAGE.

The total acreage is 130 acres, utilized as follows:

For builings, grounds, yards, etc.	30 acres
For garden and vegetables	26 acres
Pasturage and piggery	30 acres
For raising hay and grain	26 acres
For alfalfa	13 acres
For orchard	5 acres

The only irrigated land is a portion of the garden during the summer months, and costs nothing.

BUILDINGS.

The cost of buildings, including purchase of land and construction of pipe-line, etc., to date, is $450,790. The amount received in appropriations from the State for support only, is $375,000; for deficiencies, $45,000; making a total of $420,000 for support.

The buildings completed are as follows: Male ward building (basement and three floors); female ward building (basement and three floors), with connecting corridors; kitchen building (basement and three floors); laundry and bakery building (two floors); boiler and engine-house (one-story); stable, morgue, and gas house. The stable is wood; the rest are of brick. The administration building, for which contracts have been let, is to be a brick building, with basement and three floors; is to cost $60,000, and will be paid for out of the appropriation made by the Legislature, and approved April 1, 1897. The connections of the various buildings are all right, and no change is necessary.

When the administration building is completed, there will be room for about 150 more patients. At the present time, without any further buildings, room for about 65 more can be made by fitting up the corridors with beds. This will, however, crowd the hospital somewhat.

VENTILATION.

The system of ventilation is by flues, which go into the attics of the different buildings. It is not good, in fact it is unsafe, as much inflammable material is deposited in the attics, which would render a fire hard to control. The flues should be carried through the attics, which latter should be supplied with hose reels and hose with water attachments; passages should be made, and stairways built so that in case of fire there would be plenty of available water, and an easy method of reaching every part of the attics. The cost of these improvements would be about $5,000.

FUEL.

The following fuel is used: For boilers, kitchen, and fireplaces, fir and oak wood; for laundry stove, coke. The service is efficient, and the cost of wood fuel is less than coal. The amount per month used is 66¼ cords of fir wood, 21 cords of oak, and 2,880 pounds of coke. The cost for the fiscal year ending June 30, 1898, was $4,692 52. There is an abundant supply of both oak and fir wood in the vicinity for present and future supply, and a change would not be advisable while the price of wood remains as now, and the supply is adequate.

HEATING.

Hot water is used to heat the buildings. The heaters are in the basements; the heated water rises to the different floors, passes through the radiators, giving out heat in the different wards, etc., and, becoming cool, returns to the heaters, is reheated and recirculated. The system is good and gives satisfaction.

WATER.

Up to this time water has been procured from South Mill Creek through a 4-inch pipe from a small reservoir about a mile from the building. The cost of the water supply above mentioned has been less than $10,000. This supply being inadequate, a new line has been laid of 12-inch pipe and a new reservoir is being constructed with a capacity of 5,000,000 gallons, at a cost of about $11,000. When completed and put into use, the supply of water will be sufficient for all purposes. The supply of water costs simply the care of maintaining it.

LIGHTING.

The lighting is done by a gasoline gas plant. The system is expensive and inefficient, especially in winter. The machinery cost $10,000 and the average cost per month of the gasoline is $125. With the increased water supply, it will be possible to operate an electric light system, safer and more satisfactory, and the cost of such plant, including waterwheel, dynamo for 360 lights, plus several arc lights, wiring, lamps, etc., would amount to about $2,000.

LAUNDRY.

The laundry department consists of washing-room, ironing-rooms, and dry-room. There are two large washing machines and one small one, one starch boiler, three soap vats, a centrifugal wringing machine, a large mangle for plain pieces, and a shirt machine for bosoms, collars and cuffs. There is a patent drier with fifteen compartments; the capacity of the drier is too small, and an additional drier, at a cost of about $400, would be an improvement.

SEWERAGE.

The sewage is carried in pipes about 300 feet from the building into settling tanks, where the solid matter is deposited, the liquid running some 3,000 feet into a small creek. In winter time the liquid sewage is carried into a creek, thence into Russian River; in summer, when the creek is dry, the sewage runs along the creek bed and sinks into the ground before it reaches the river. The cost of the plant to date has been about $3,000. The adjoining landowners complain of the stench that arises from the outlet of the sewer, and something will have to be done to abate the nuisance. The matter is now under consideration by the Board of Managers.

BATHING.

Bathing is done by bathtubs, of which there are two in each ward. In the receiving ward there is a spray bath. The system is satisfactory, is in good condition, and there is nothing that can be done to improve the system.

POWER.

Power used in the institution is steam, furnished by double boilers from the boiler room. The laundry has a 12 horse-power upright engine, by which the laundry machinery is run. All the water for bathing and kitchen purposes and for cooking with steam furniture is

heated by means of steam from these boilers. When the new water supply is complete there will be sufficient water power to run all machinery, and steam will only be needed for heating water for bathing purposes and for cooking in the kitchen. This power will also suffice to operate an electric light plant, and decrease the cost of fuel.

As to the cost of power for the fiscal year ending June 30, 1898, an exact figure cannot be given, as no separate account has been kept. The approximate cost is about $1,000. Power is used only for running the machinery of the laundry, and requires about 25 cords of wood per month, at a cost of about $3 50 a cord.

CAPACITY.

The present capacity of the wards is 530 beds for patients. There are five male and two female wards; with the exception of 30 beds, in use to their utmost capacity. By making an associated dining-room in the basement, and by utilizing the connecting corridors on the two top floors, room could be made for 50 more beds for patients, at a cost of about $1,300. The capacity of the institution will be increased by 130 more beds when the administration building is completed.

PATIENTS.

On June 30, 1898, the nativity of the patients was as follows:

	Males.	Females.	Total.
Natives of California	40	20	60
Natives of other States	90	36	126
Foreign born	223	62	285
Unknown	4	2	6
Totals	357	120	477

On June 30, 1898, there were two patients on parole—one male and one female.

The average daily attendance of patients for the first year, since the establishment of the asylum, was 155; for the fiscal year ending June 30, 1898, 449.1.

Out of 211 patients admitted to the hospital during the fiscal year of 1897, there were 101 born in the United States, 107 foreign born, and 3 unknown.

The percentage of cures during the last two fiscal years was: July 1, 1896, to July 1, 1897, 34.65; from July 1, 1897, to July 1, 1898, 26.54.

The percentage of discharges, cured and uncured, to admissions was: From July 1, 1896, to July 1, 1897, 44.74; from July 1, 1897, to July 1, 1898, 34.59.

The number of escaped and the number returned each year up to July 1, 1898, were:

December 12, 1893, to July 1, 1894	Escaped, none.
July 1, 1894, to July 1, 1895	Escaped, 4.
July 1, 1895, to July 1, 1896	Escaped, 4; returned, 4.
July 1, 1896, to July 1, 1897	Escaped, 1; returned, 1.
July 1, 1897, to July 1, 1898	Escaped, 6; returned, 2.

The average daily per capita cost of patients, figured on and including all expenses for food, fuel, clothing, and employés, etc., is as follows:

From Dec. 12, 1893, to July 1, 1894 $92\frac{3}{7}$ cents per day.
From July 1, 1894, to July 1, 1895 $61\frac{4}{5}$ cents per day.
From July 1, 1895, to July 1, 1896 50 cents per day.
From July 1, 1896, to July 1, 1897 $46\frac{5}{10}$ cents per day.
From July 1, 1897, to July 1, 1898 $44\frac{9}{10}$ cents per day.

This hospital has less patients than any other institution of this kind in the State, and this fact makes the per capita appear higher, when compared with other asylums.

The amount of money on hand belonging to patients on June 30, 1898, was $1,908 75.

PRIVATE CONTRIBUTIONS.

Private contributions of money, clothing, etc., are received by the Medical Superintendent. All money is turned over to the Treasurer of the Board of Managers, after the amount has been credited to the patient in the books kept at the hospital.

All clothing or any articles received by the Medical Superintendent, and deemed proper for the patient to have, are given to the Supervisor for the male patients, and to the Matron for the female patients, by them entered in books kept for that purpose, and handed to the attendant in charge of the ward in which the patient is kept. The attendant then enters the same in a book kept in the ward, and subject at any time to the inspection of the Medical Superintendent, or Supervisor, or Matron.

Visiting relatives and friends are allowed to visit patients, if in the judgment of the Medical Superintendent, such visit will not be injurious.

This institution has very few pay patients; most of the cases come from San Francisco, and belong to a class usually without friends, and in many cases are unknown.

The class sent here are vagrants, morphine and whisky cases, and subjects from the almshouses.

BOOKS AND ACCOUNTS.

The accounts of the receipts of money from board of pay patients, etc., are kept in the office of the Medical Superintendent. At the end of each month, the money received is paid over to the Treasurer. This report is examined each month and checked up by the Finance Committee of the board.

The account of all expenditures made by the Superintendent is also reported to the board each month, and acted upon by the Finance Committee in the same manner. The account of the receipts of all goods, and the distribution of the same, is kept by the Steward. The books of the Steward are frequently examined by the Medical Superintendent and his secretary. The monthly report of the Steward shows the amounts.

REQUISITIONS.

Requisitions are issued from the office of the Medical Superintendent twice each week. Inventories of ward property are taken each month, and of the other departments, annually. All goods, or stock, which has not been issued, are under the control and keeping of the Steward.

CLINICAL RECORDS.

The system of clinical records in use in the institution since May 1, 1898, gives a careful history of each case from the time the patient is received to the time he or she ceases to be an inmate of this hospital, but at the time of the visit of your committee, has not been kept in the complete manner it should be, or as it was intended.

Post mortem examinations are made of all subjects that are at the hospital, where there is no objection, and where the remains are buried at the hospital. These examinations are carefully noted in the post mortem book.

EMPLOYÉS.

The increase of employés, as compared with the increase of patients, since 1893, has been slight, only a few additional attendants having been employed. Seven more attendants will be needed when the administration building is finished. At that time, and possibly sooner, it will be necessary to add one more assistant physician to the medical staff. If at any time an employé is discharged, the cause of his discharge, date, etc., is entered in a book kept for that purpose. Each employé is allowed two weeks' vacation a year. The attendants, or those who do duty in the wards, have every third night and every third Sunday. Those whose duty does not confine them to the wards have every Sunday, and have their evenings. No time is allowed for sickness, and all time is charged to the employé who loses it, unless otherwise entitled to it. A time book of the employés is kept in the Medical Superintendent's office.

PRODUCTIONS.

This institution has no dairy, and is compelled to purchase its milk from outside parties. Up to the 1st of July, 1898, milk, fresh and pure, was delivered at the hospital for 12½ cents per gallon. Since the 1st of July, 1898, the price has been raised to 16 cents a gallon, there being no competition, on account of the lack of dairies in the vicinity.

This institution does not manufacture any articles or supplies of any kind whatever. The only produce raised is hay and vegetables—grain hay, enough for own use, and several tons of alfalfa hay, a part of which is sold each year. All the vegetables used, except a portion of the potatoes, which are bought on contract, are raised at the hospital.

With the present lot of patients, more work on the farm and in the different departments of the institution cannot be done. It requires all the help that can be got from patients who are able and willing to work, to do the ordinary routine work of the institution.

There are patients employed in the garden, at the laundry, in the kitchen and dining-rooms, at the stable, and on the farm. There is nothing that could be raised or produced at this time for sale or delivery to other institutions.

FURNITURE.

The furniture in the wards consists principally of iron bedsteads for patients, settees in the corridors, and tables for reading and card-playing in the recesses. The iron beds have a woven wire mattress on them. In the female wards are some chairs. In the dining-rooms, the only furniture used is wooden tables, chairs in some wards, and benches in others. In the employés' rooms are a three quarters wooden bedstead, washstand, center table, rocker, and chair. Each room has a fireplace in it. Hair mattresses are used for both patients and employés. In the officers' quarters, the furniture is plain and substantial. There is nothing extravagant, so far as seen, in the line of furniture in any of the departments of this institution.

In the kitchen is a range, a steam table, coffee and tea boilers, soup and mush kettles, a potato boiler, and sinks, etc. The kitchen is well fitted with suitable steam furniture, and there will be nothing needed in this department until the building is enlarged.

FOOD.

All food is cooked in one kitchen. That for officers and attendants' dining-room is cooked together and served direct from the kitchen. That for the wards is cooked together and served from the kitchen into tin vessels, which keep the food hot while it is in transit from the kitchen to the wards. The food is elevated from the basement to the ward pantry, and there served to the patients in the dining-room.

For those who are sick or feeble, a special diet is provided, which is served to them in their room by the attendant.

LIBRARY.

There is no library, with the exception of a few medical works for the physicians. A good reading library for employés and patients, and a medical library for the physicians, would be valuable acquisitions.

RELIGIOUS SERVICES.

At this time there are no religious services. When a suitable place is provided by the completion of Assembly Hall, it is the desire of the management to try and have regular religious services.

CORRECTIONS.

Punishment of patients is not allowed. When a patient is destructive or is violent and is liable to hurt himself or others, he is restrained by means of a jacket or straps. The attendant puts the straps or jacket on, with the knowledge of the physician or by his direction, and reports the same to the Supervisor or Matron, and they file a daily report in the office of the Medical Superintendent, of all incidents and happenings on the wards during the day and night.

EDUCATIONAL ADVANTAGES.

No educational advantages are offered.

ADVERTISING FOR SUPPLIES.

Advertising for supplies is done annually. The Medical Superintendent submits a schedule of all supplies needed, and the State Commission in Lunacy frames the advertisement and furnishes each hospital with blank schedules, showing the kind and amount of supplies desired, which are distributed among those who wish to bid. This schedule also contains all of the information necessary to guide the bidder, as to time, manner, etc. The system of advertising once a year instead of twice, is preferable, as the State gets better contracts and less expense attends it.

EXAMINATION FOR APPLICANTS.

It is necessary for all applicants for positions at this State hospital to undergo an examination. The questions are prepared by the Medical Superintendent and submitted to the State Commission in Lunacy for their approval. In addition to this examination, the applicant has to submit to a physical examination, which is conducted by the medical staff of the hospital. If he reaches a certain per cent on the questions, and is in good physical condition, he is placed on the eligible list, from which list appointments are made when vacancies occur.

COST OF MAINTENANCE.

The cost of maintenance for the fiscal year ending June 30, 1898, was $73,870 94.

The cost of plant, including purchase of land, pipe line, etc., $450,790.

The average daily cost per capita for patients, for the fiscal year ending June 30, 1898, 44.9 cents.

The average daily cost per capita for patients, officers, and employés for the same period, 31.2 cents.

The balance in the contingent fund, October 1, 1898, was $3,942 07. Amount paid out since inauguration of fund to October 1, 1898, was $10,846 70. Of this amount there was paid out for permanent improvements, $7,791 77; amount paid out for incidentals, being for railroad fare of discharged patients, purchase of hogs, expenses returning escapes, postage, etc., $3,054 93; making the total of the contingent fund, $14,788 77.

THE PER CAPITA COST PER ANNUM FOR MAINTENANCE.

	1893-94.	1894-95.	1895-96.	1896-97.	1897-98.
Salaries	$99 18	$128 24	$106 36	$95 26	$91 16
Food	38 07	48 09	40 45	38 63	40 37
Medicines	3 74	3 86	1 96	1 92	1 56
Clothing and wearing apparel, etc.	11 01	9 70	7 13	6 78	5 91
Light	3 69	3 34	2 99	2 92	2 59
Farm and garden	88	1 10	1 01	72	55
Stationery	34	34	24	11	38
Telegraph, telephone, freight, and express	1 36	2 38	1 57	1 56	66
Miscellaneous	45 81	50 22	39 82	26 85	25 04
Totals	$204 08	$247 27	$201 53	$174 75	$168 22

Average Number of Patients.

First year	155
Second year	260
Third year	318.6
Fourth year	383.6
Fifth year	449.1

SYSTEM OF BOOKKEEPING.

The system of bookkeeping and accounts, which has lately been introduced into all the State hospitals, is an improvement over the system in use prior to July 1, 1898.

ASSEMBLY HALL.

This institution is yet without an assembly hall. The hall which is now in use was intended for a dormitory for patients, and is entirely inadequate to serve as an assembly hall, for amusements, dances, religious services, etc. Present plans contemplate the erection of such a hall, in a building between the present ward building and the administration building, now in course of erection. This will make the structure complete. The estimated cost of assembly hall building, etc., is about $20,000. The amusement of the patients is a very important part of the treatment, and it is impossible to give them sufficient amusement unless there is a suitable hall.

ICE PLANT AND COOLING-ROOM.

The establishment of an ice plant, with a cooling-room or refrigerator, is an urgent necessity. In this climate, where in the summer time the thermometer rises to 106°, and sometimes higher, cold storage and ice become a necessity. It is an economical measure, too, as without cold storage there is more or less waste in the line of meats, etc. The estimated cost of the plant, with cooling-room, is about $3,000. There will also have to be a building to contain the ice plant, and also the electric plant. The cost of such a building is estimated not to exceed $1,000.

NAPA STATE HOSPITAL.

LOCATION OF HOSPITAL.

The Napa State Hospital for the cure, custody, and treatment of the insane is situated about 1½ miles from the City of Napa, in the County of Napa; the city itself being located upon a branch of the Southern Pacific Railroad, and upon the banks of the Napa River, which is navigable to that point.

HISTORY OF HOSPITAL.

In 1872 the Legislature of the State of California passed an Act authorizing the establishing, "upon a site to be selected by commissioners chosen therefor, an institution for the care and treatment of the insane, to be designated as the ——— State Asylum for the Insane," the blank before the word State in this section to be filled by the name of the place, city, town, or county where said asylum shall be located; authorizing the Governor to appoint three commissioners to select a site,

defining the duties of said commission, and requiring them to report their action in the premises to the Governor and Secretary of the State Board of Health, within four months after their appointment, confining the selection of site for location of said asylum "to the central and western portion of the State, embracing the central coast counties and the counties bordering on or lying west of the valley of the Sacramento and San Joaquin rivers; the commissioners being authorized, upon the above named basis, to fix more definitely the limits to the territory to be admitted and considered in the selection of said site"; authorizing the Governor to appoint a board of directors, consisting of five members, to manage the affairs of the institution; and providing for the procuring and adoption of plans, drawings, and specifications for the construction of said asylum and other buildings, and the improvement of the grounds.

Said commissioners reported to the Governor on August 2, 1872, deciding to locate the hospital on the present site, and the report was approved by the Governor and Thomas M. Logan, Secretary of the State Board of Health, August 12, 1872.

On January 30, 1873, deeds conveying to the State 16.16 and 191.77 acres of land, made by T. H. Thompson and Don Cayetano Jaurez, respectively, for and in consideration of the sum of $60 per acre, were duly recorded in the office of the County Recorder of Napa County.

ACREAGE.

The total acreage of land belonging to the State in connection with this hospital is 1,229.16; and its cost to the State has been the sum of $37,889 40.

The original tract of land has been added to as follows:

Mar. 12, 1877—	405.68 acres, by condemnation suit, for	$4,494 50
May 8, 1879—	192,00 acres, purchased for	4,500 00
June 25, 1881—	402.16 acres, purchased for	12,000 00
June 20, 1883—	5.33 acres, purchased for	1,000 00
Sept. 15, 1888—	1.00 acre, by gift.	
Jan. 5, 1896—	6.53 acres, purchased for	653 00

On August 14, 1889, there was deeded to Napa County for road purposes, 1.47 acres, for which $35 75 was received; and on September 14, 1889, there was sold to one Kennedy, 8 acres, for which $200 was received.

The land is utilized as follows:

Hospital proper	30.0 acres
Cemeteries (2)	2.5 acres
Reservoirs	2.5 acres
Orchards (mixed fruits)	45.0 acres
French prunes	20.0 acres
Vineyard	12.0 acres
Vegetable gardens	26.0 acres
Dairy, stable, and sheds	2.0 acres
Hay or farming lands	200.0 acres
Pasturage	890.6 acres

In addition to the above, there are 60 acres of pasturage land rented, for which is paid $50 per annum.

There are certain rights of way for the purpose of maintaining a pipeline for conveying water to hospital from lands belonging to the State, lying in a northeastern direction from the hospital buildings, and distant a little over two miles therefrom.

Between 45 and 48 acres are irrigated; 26 acres of which are in vegetable garden and are irrigated by sewage from the hospital; and between 10 and 12 acres in lawns, flowers, and shrubs, which are irrigated from Lake Camille. Water is also taken from this lake for sprinkling the avenues and roads around the hospital.

With a proper and adequate water supply there could be irrigated between 90 and 100 acres additional. The question of an additional water supply for this institution is one of grave and vital importance. There is a scarcity of water for hospital purposes.

The cost of obtaining an additional water supply, as estimated by O. H. Buckman, engineer, for a reservoir having a storage capacity of 300,000,000 gallons, is $133,000. This estimate is simply for the construction of the reservoir, and to it should be added the cost of purchasing the land on which the site of the reservoir is situated, probably $8,000 or $10,000 more.

BUILDINGS.

The management (also authorized by State Commission in Lunacy) contemplate the erection very soon of a morgue building. This is to be of brick, 18x40, to cost $1,000, and will be paid for out of the contingent fund.

The question as to the cost of the main hospital, and such buildings as were included in the original contract, is one very difficult to answer as books are not procurable that will give the figures.

Neither the allowances, nor payments for the building or construction of the asylum, nor of the purchase of the lands for said asylum grounds, are entered therein. Nor is there any book or books among the asylum records showing or giving the desired information.

The cost of buildings under the Act creating the Napa State Asylum for the Insane, passed March, 1872, when completed, $1,336,047 70; furnishing same, $195,500.

The cost of improvements under the various appropriations made by the several Legislatures of the State:

Improvements of attics and furnishing for occupation of patients	$37,974 90
Reservoir	14,999 38
Bay windows	2,999 87
Water tanks	1,000 00
Elevators	1,250 00
Stable and barn	2,500 00
Grounds	1,961 34
Fencing	3,000 00
Wharf	500 06
Painting	2,499 94
Fire protection	7,500 30
Gas works	2,000 00
Floor and hallways	2,000 00
Building two infirmaries	24,995 26
Furnishing same	2,711 58

Permanent improvements, other than those for which appropriations were made, have been as follows, to wit:

Stone building—Kitchen		$2,984 77
	Scullery	1,631 00
	Cold storage	1,517 88
	Stable and barn	2,803 73
Stone and brick—Coal bins		814 25
	Water tower	487 65

Brick building—Carpenter shop	$1,870 00
Addition to dining-room	1,050 00
Garbage house	600 00
Ice house (2)	750 00
Brick cistern	467 00
Brick and wood building—Tank house	450 00
Wood building—Dairy, stable, and sheds	1,430 37
Guard lodge at entrance	350 00
Blacksmith shop	839 78
Paint and tin shop	715 10
Wharf and storehouse	1,274 00
Coal sheds	634 45
Four cottages for employés	2,847 50
Sheds for carriages and horses	801 71
Lumber sheds	125 00
Farm house	565 10
At Spencer Creek reservoir	230 00
Ventilators for main building	1,554 10
Iron water pipes, used to connect new buildings with water main	11,510 88
Cooling-room and ice machine in cold storage	2,000 00
Sewer brick and sewer pipe to outlet (5,500 feet)	4,198 63
Brick building—Superintendent's cottage	6,000 00
Two brick buildings—closets for patients' use	----------

The above permanent improvements were made out of the contingent fund.

The main hospital building is all under one roof, and is connected by towers and corridors; and the main kitchen, bakery, laundry, boiler-house, and engine-room, and carpenter shop are situated in very close proximity thereto. The system as to utility and requirements is entirely satisfactory, and no improvement therein is necessary.

Any transfer of a portion of the inmates of this hospital to other institutions would obviate the necessity of additional buildings, provided other patients were not sent to take the place of those transferred. The original plans of this hospital only contemplated the care of 800 patients. When the cottages for the assistant physicians above mentioned are completed, some additional room will be provided for the accommodation of present patients, but very little room for the admission of new patients.

VENTILATION.

The system is the Cottier, and is applied to the center building. The main hall has thirty-one registers. Officers' rooms, bath, wash, and dining rooms, and waterclosets have one and two registers in each room. Each register has an independent flue running to an air-tight attic; and from the attic the foul air is carried through the roof to three large center ventilators. The same system is connected with the laundry drying-room.

The system is far from perfect, yet better than some other systems. The only thorough way of ventilating and heating this hospital would be by means of blowers and fans, electrical motors, or some other power connected with an air-shaft or stack.

FUEL.

Three kinds of coal are used: Welsh anthracite, Wallsend Sydney, and shale—Welsh anthracite coal under boilers; Wallsend Sydney coal for manufacturing illuminating gas, for cooking-engines in main kitchen, infirmaries, and doctor's kitchen, and also for twelve heating-stoves on wards and infirmaries, and sixty-three open grates in attendants and officers' rooms, offices and buildings; and shale for enriching gas.

HEATING.

Most of the heating is done by steam at a low pressure.

The wards average thirteen heaters, making thirteen ventilating and heating flues to each ward.

This heating system has been in use over twenty years, and has to be repaired every summer; next year part of it will have to be renewed at no great expense, as the copper tubes will be made at the repair shop.

The hot-water heating system is used in three wards in the center building, and in the doctors' quarters. There is no ventilating system connected with it, nor does it compare favorably with other ward-heating system. There are twelve large heating stoves in wards of center building and infirmaries, and sixty-three open grates in attendants and officers' rooms, offices, and outbuildings.

WATER SUPPLY.

There are four systems: Spencer Creek system, Kruse Cañon system, Lake (three storage reservoirs) system, Fire (used for fire purposes only) system.

The source of the Spencer Creek system is about 2¼ miles in a direct line from the hospital. A converting dam at Spencer creek catches the water, which is then run through a strainer into a large cut and tunnel about 1,200 feet long. The main pipe-line on this system is 6-inch, part cast, part sheet-iron, with necessary air valve, gates, etc., for the purpose of making necessary repairs on the pipe-line. At the hospital this pipe-line connects with the other water system, through a combination of valves, by which connection the water can be carried to any part of the building or grounds, even though some of the water systems become dry. At times in summer there is not sufficient water to flush the waterclosets in the wards.

The source of Kruse Cañon water system is 1½ miles from the hospital. The pipe-line is a 4-inch cast-iron pipe. This is the *purest water*, but the supply is less than that from the Spencer Creek system. It is used principally for cooking and drinking purposes. This system supplies the loss of water in Fire Reservoir, caused through leakage, fire practice, and evaporation.

Fire Reservoir is a lake of 2,500,000 gallons capacity. Its elevation is such as to admit of throwing several streams over the highest buildings. The water main is 8-inch cast-iron pipe, and about half a mile in direct line from hospital.

Lake Water System: The lakes are about half a mile from hospital. The total capacity of the three lakes or reservoirs is 43,000,000 gallons. The main is a 6-inch pipe, part sheet and part cast-iron, running to a valve house at the hospital, branching therefrom in different directions to irrigate vegetables, flower gardens, and lawn. Some of this water is also used for laundry and for sprinkling drives and roadways.

While the different water systems are not in a bad condition, they demand considerable work cleaning out tunnel, dams, reservoirs, at times requiring repairs on pipe-line, air valves, gates, etc. Part of Spencer Creek main is sheet-iron pipe, and may have to be replaced with cast-iron pipe shortly, although it is not necessary to make the change unless the sheet-iron pipe shows weakness, or develops bad leaks, which may not happen for some time to come.

LIGHTING.

The lighting is done entirely by coal gas. Gas is also used to run laundry machinery and heating cooking stoves.

SEWERAGE.

A 16-inch sewer, collecting all sewage, drains waste water from laundry, fire and engine rooms, and all the buildings back of main hospital, and connects about 300 feet west of hospital with a brick sewer, 2½x4½ feet, oval in shape. Besides the above 16-inch sewer, there are two 10-inch, two 5-inch and six 4-inch sewers, which discharge into the brick sewer all the sewage of the main hospital building, discharging into the above two 10-inch sewers from two large flush tanks outside of main building. The sewage from all parts of the hospital is carried into flush tanks by a number of 6-inch and 4-inch sewer pipes.

The brick sewer is about 900 feet long, and ends about 1300 feet below hospital. The sewer discharges from brick sewer into one 14-inch and two 6-inch pipes, the 14-inch pipe emptying into the Napa River, and the two 6-inch discharging into a cistern 40x25x12½ feet. The sewage from cistern is used for irrigating vegetable gardens. The sewers are in perfect condition, but the condition of the waterclosets and the plumbing should be improved.

BATHING.

Each ward is furnished with a bathtub, with hot and cold water connected, but the bathrooms in most of the wards are too small.

History of institution does not show the segregated cost.

Present condition is fair, but it could be improved by enlarging bathrooms.

POWER.

There are four horizontal return tubular steam boilers, each 16 feet long by 5 feet in diameter, with sixty 3½-inch tubes, of which three boilers are used in winter and two in summer. Steam is furnished to kitchen, laundry, planing mill, fire and gas room, engine-room, and is used in different departments for running machinery.

The power system is as nearly perfect as it could be made, and its present condition is very good.

CAPACITY.

The original plans called for accommodations for 600, but by the utilization of some of the attics and other rooms, capacity for the comfortable accommodation of 200 additional has been added. However, on the 30th day of June, 1898, the capacity was 1,466. There are 34 wards—19 male and 15 female—and all are occupied.

The only portion of any of the buildings that can be utilized for the accommodation of patients is in the main hospital or administration building, the apartments now occupied by the assistant physicians. The cost of fitting up and furnishing these quarters would be between $5,000 and $6,000, and would supply accommodations for 70 patients. Any increase in the population over and above that number will necessitate the construction of additional accommodations.

PATIENTS.

There are 1,470 patients at this writing—844 males and 626 females.

The number of patients on parole (leave of absence) per annum varies. The advisability of letting a patient leave the hospital on parole is left to the determination of the Medical Superintendent.

There are on leave of absence at this date, October 24th, 34 patients—13 males and 21 females.

Exclusive of Sundays and holidays, since January 1, 1898, to and including November 27, 1898, there has been a daily average of 284 male patients and 132 female patients employed in permanent improvements or productive work, at the hospital. In Ward No. 6 is the tailor-shop, and in this ward all the clothing is made for the male department of the hospital.

The percentage of recoveries to admissions, by years, is as follows:

July 1, 1890, to July 1, 1891	22.74%
July 1, 1891, to July 1, 1892	34.65
July 1, 1892, to July 1, 1893	35.00
July 1, 1893, to July 1, 1894	34.57
July 1, 1894, to July 1, 1895	28.75
July 1, 1895, to July 1, 1896	23.48
July 1, 1896, to July 1, 1897	27.07
July 1, 1897, to July 1, 1898	17.30

The percentage of escapes to admissions, by years, is as follows:

July 1, 1890, to July 1, 1891	.023%
July 1, 1891, to July 1, 1892	.025
July 1, 1892, to July 1, 1893	.024
July 1, 1893, to July 1, 1894	.0082
July 1, 1894, to July 1, 1895	.017
July 1, 1895, to July 1, 1896	.056
July 1, 1896, to July 1, 1897	.021
July 1, 1897, to July 1, 1898	.025

The percentage of discharges to admissions, by years, is as follows:

July 1, 1890, to July 1, 1891	44.14%
July 1, 1891, to July 1, 1892	57.40
July 1, 1892, to July 1, 1893	48.92
July 1, 1893, to July 1, 1894	48.55
July 1, 1894, to July 1, 1895	41.63
July 1, 1895, to July 1, 1896	37.65
July 1, 1896, to July 1, 1897	37.11
July 1, 1897, to July 1, 1898	40.50

PRIVATE CONTRIBUTIONS.

There are no private contributions to patients other than those made by relatives, except reading matter, which is taken in charge by the messenger and issued to the attendants, to be taken to the wards for the patients.

All clothing received for patients is taken account of by the Supervisor and Matron, respectively, and looked after by them.

All moneys received with or for patients is deposited in the office and a receipt therefor given, and when any of it is drawn or expended for such patient a receipt is required and is kept on file.

ACCOUNTS AND BOOKKEEPING.

Accounts are vised every six months by the Board of Managers. The amount received from pay-patients is as follows:

For two fiscal years ending June 30, 1892	$27,511 60
For two fiscal years ending June 30, 1894	31,079 95
For two fiscal years ending June 30, 1896	25,380 72
For the fiscal year ending June 30, 1897	12,092 50
For the fiscal year ending June 30, 1898	14,776 42
Total	$110,841 19

All accounts of pay-patients are kept at the hospital, and all money received on account of board or otherwise is deposited with the Treasurer.

Expenditures of money in the contingent fund are made and account thereof kept by the Treasurer.

Receipts are taken and kept on file of claims paid, and before the Treasurer is authorized to pay any claim against the contingent fund an estimate is prepared and approved by the Superintendent, Board of Managers, and by the State Commission in Lunacy.

Requisitions are first made in blank order books, and approved by Supervisor or Matron, respectively, also by the physician in charge of the ward or department, then copied into blanks prepared by the State Commission in Lunacy, approved by the Medical Superintendent, and kept on file in the steward's department.

Inventories are taken of the store monthly, and are kept on file in the Steward's department.

The control of the stock in hand is placed under the care of the heads of the various wards or departments, and they are held responsible for same.

CLINICAL RECORDS.

Heretofore no clinical records have been kept at this hospital, but a form is now being revised and it is expected to soon inaugurate a thorough system.

EMPLOYÉS.

Employés are appointed and discharged by the Medical Superintendent, and his actions are ratified by the Board of Managers. Employés are discharged for any disobedience of the by-laws and rules adopted by the Board of Managers for the management of this hospital. A record is kept of all discharges; the book in which such discharges are kept is not paged, but is an indexed book. All appointments, discharges, and resignations are reported monthly to the State Commission in Lunacy.

BOARD OF MANAGERS.

Name.	Term.
H. H. Harris, chairman, Rutherford	from July 16, 1896, to July 16, 1900.
A. W. Barrett, Sacramento	from April 4, 1898, to April 4, 1902.
Raleigh Barcar, Vacaville	from July 16, 1896, to July 16, 1900.
R. P. Lamdin, Napa	from April 4, 1898, to April 4, 1902.
E. E. Washburn, Parrott Building, San Francisco	from April 4, 1898, to April 4, 1902.

The Board of Managers hold two meetings per month; the first and regular meeting is held on the second Friday of each month; the second meeting is on date agreed upon at first meeting.

The members of the Board of Managers receive $10 a day and their actual expenses. Under this provision—

H. H. Harris received during fiscal year ending June 30, 1898	$275 80
A. W. Barrett received during fiscal year ending June 30, 1898	275 80
Raleigh Barcar received during fiscal year ending June 30, 1898	381 55
R. P. Lamdin received during fiscal year ending June 30, 1898	273 00
A. J. Hull received for services from July, 1897, to April 30, 1898	224 35
E. E. Washburn received for month of May and June, 1898	95 00
Total	$1,573 80

Up to the present time appointments in this institution are not under civil service rules.

Relatives and friends are permitted to visit patients any day in the week between the hours of 9 and 11 A. M. and 2 and 4 P. M.

The assistant physician, matron, assistant matron, supervisor, steward, clerk, stenographer, and porter, have their apartments and rooms in the main administration part or center building in the hospital, which are furnished and supplied at the expense of the State. The engineer, laundryman, assistant carpenter, and one laborer live in houses belonging to the State, close to the main hospital. The attendants and assistant attendants occupy rooms on their respective wards, furnished by the State. The night watches occupy rooms (for sleeping purposes only) fixed up for them in the attic of the main hospital building. The firemen, plumbers, bakers, cooks, and laborers have rooms over the laundry and bakery. The hostler has his room in the barn; the dairymen have a room at the cow barn.

Each employé has ten days' vacation in a year, and thirty days' vacation for ten years' continuous service, without loss of pay. Officers are granted vacations according to circumstances. An employé who is off duty other than as above stated, is docked for whatever time he may have lost.

PRODUCTION.

Enough milk is produced for use of the hospital.

The products of the institution are hay (but not enough to supply needs), and all vegetables, fruit, grapes, and pork used.

There is manufactured for the use of the hospital, gas, ice, tinware, clothing and underclothing, bedding (except blankets), and bricks. The institution does its own carpentering, blacksmithing, and building. No patient is required to work unless the exercise is deemed beneficial to him, and in such case he is employed at what he can do most readily and will most conduce to his health. Patients assist in nearly all the duties connected with the hospital, on the ranches, among the flowers and shrubs, in the gardens, orchards and vineyards, in the kitchen, laundry and dining-rooms, etc.

This hospital does not, neither can it produce any supplies for sale to other institutions.

FURNITURE.

The furniture in the wards of the hospital is neat and substantial. The kitchen is furnished with range and such furniture as is needed in well-appointed kitchens.

FOOD.

The food is cooked by steam and on the range, that for the patients being carried by cars running underneath the main building from the kitchen to various elevators, whence it is carried to the wards and

served. The attendants' food is served to them in dining-rooms, male and female dining-room being separate. The working men and patients who assist in kitchen, in fireroom, on grounds, etc., have also a separate dining-room. The Medical Superintendent has dining-room in his house; the Assistant Physicians, theirs in their quarters.

The steward, steward's clerk, matron, supervisor, assistant matron, assistant supervisor, druggist, stenographer, carpenter, painter, and engineer use one dining-room.

LIBRARY.

There is no library worth mentioning. There are only a few books, and several hundred magazines, all contributed.

RELIGIOUS SERVICES.

Religious services consist of service by a minister from each denomination of churches in Napa, officiating in rotation, and services are held every Sunday.

CORRECTIONS.

There are no punishments or corrections, and no educational advantages offered.

EMPLOYMENT OF INMATES.

In the clerical and administrative department of this hospital there is no inmate employed, with the exception of two patients, who assist at times in copying, when there is a rush of work, nor can any increase be made.

IMPROVEMENTS.

The most important improvements are the construction of stone, brick, and frame buildings, sewer, ventilators, clinical records, file, etc., amounting to $36,801 95, a large per cent of the labor being done by patients.

The contingent fund has been used largely for improvements.

There is in the course of construction two brick cottages for occupancy by the assistant physicians, and when they are completed and occupied, additional room for the accommodation of 70 patients in the main hospital building will be provided. These cottages are to cost not exceeding $4,000 each, and are to be paid for out of the contingent fund.

CONTINGENT FUND.

For the two fiscal years ending June 30, 1898, receipts on account of the contingent fund are:

Cash from board of patients	$26,872 92
Cash from Steward's sales	1,113 77
	$27,986 69

Expenditures for the two fiscal years ending June 30, 1898, are $20,442 12.

For details of receipts and expenditures, see momorandum on file, and not printed.

The total amount received on account of contingent fund, from June 30, 1890, to June 30, 1898, is	$123,612 56
Amount expended in same time	120,454 73
Balance on hand	$3,157 83

There has been nothing expended from the contingent fund for the purchase of lands since January 1, 1891. However, there was an appropriation by the Legislature in 1896, for the purchase of 6.53 acres, for which $633 was paid.

ADVERTISING FOR SUPPLIES.

Advertising for supplies is under the direction of the State Commission in Lunacy.

BOOKKEEPING.

The present system of accounts and bookkeeping is suitable, in so far as it goes. The system of keeping the accounts with the patients might possibly be improved. The system in use in the steward's department serves as a check on articles supplied to each department.

SOUTHERN CALIFORNIA STATE HOSPITAL.

LOCATION.

The Southern California State Hospital is situated at Patton, San Bernardino County, 500 yards from the Santa Fé System and the San Bernardino Motor line, 7 miles from San Bernardino, and 7 miles from Redlands, both on the Southern Pacific and Santa Fé Railroads; one through train to Los Angeles on the Santa Fé Railroad, and one train with delay of two hours at Redlands. Motor connects with the trains at San Bernardino, via Southern Pacific.

BOARD OF MANAGERS.

There are five managers of this institution, namely:

H. L. Drew, of San Bernardino, appointed May, 1894; James A. Gibson, of Los Angeles, appointed in May, 1894; H. W. Patton, of Los Angeles, appointed in July, 1896; James C. Keyes, of Los Angeles, appointed in March, 1897; John McGonigle, President, of Ventura, appointed in July, 1896; Noah R. Plaisted, Secretary and Treasurer, of Riverside.

They receive actual fare from place of residence to hospital and return, and a per diem of $10 for time actually served.

They meet regularly on the second Tuesday of each month. Specially called meetings are held very rarely, there being perhaps three or four during the year.

Salary and mileage paid to Board of Managers is as follows:

Manager Keyes	$322 00
Manager Drew	146 50
Manager Gibson	227 25
Manager Patton	318 00
Manager McGonigle	597 50
Total	$1,611 25

HISTORY.

The Southern California State Hospital for Insane and Inebriates was established March 11, 1889 (Statutes of 1889, p. 481), $350,000 being appropriated for the purposes of purchasing the site and erecting build-

ing. The hospital is one connected building, divided into six wards, three at each end, and was finished in July, 1893, and opened in August, at which time patients to the number of 100 were transferred from the northern asylums. The property on which the hospital grounds are located was purchased in 1892, and all of the appropriation was used for the purpose of purchasing such property and erecting said building. In 1892 the sum of $55,000 was appropriated for the furnishing of said hospital.

ACREAGE.

There are 363 acres, of which 13 acres are devoted to buildings and grounds, 18 to garden and vegetables, 197 to pasturage, 8 to vineyard, 30 to oranges, 30 to deciduous fruits, 40 are used as reservoir site, and the balance in streets. About 150 acres are irrigated, and the balance, about 185 acres, can be irrigated at a cost of leveling the land, purchase of water, and employment of more help. The State owns 60 inches of Bear Valley water, being 720 shares in North Fork ditch, which is a prior right.

The cost of the real estate belonging to the hospital—original cost was $96,000. Estimated value of the real estate, improvements, furniture, stock, and all other property of the institution on hand June 30, 1898, is as follows:

Land	$200,000
Water	40,000
Building and improvements	275,000
Stock, machinery and furniture	75,000
Live stock and farm implements	10,000
Total	$600,000

BUILDINGS.

The cost of the main building was	$350,000
Cost of laundry	6,000
Cost of engineroom	4,000
Cost of barracks	5,500
Cost of carpenter shop	1,500
Cost of dairy barn	2,995
Cost of horse barn	2,000
Making a total of	$371,995

None of the buildings are completed, and there are none in course of construction; the present system, as far as completed, is satisfactory, both for the convenience and the successful handling of patients and sanitation.

The condition of buildings is good, and no material improvements are required, but more room is greatly needed, and the cost for new and necessary buildings would be about $500,000.

VENTILATION.

The system is the fan system, by which hot and cold air in sufficient quantities is forced through flues and pipes to each ward. The fans are not run in warm weather, at which time direct means for ventilation are used. The effect is salutary and perfect of its kind, and normal in its condition. We need more buildings, with ventilation to correspond, at an estimated cost of $150,000.

FUEL.

The fuel used is crude oil, and it is effective and efficient. In 1897–98 the cost was $3,392 05, or an average of 8.10 barrels per day.

The utility of a change in fuel would depend upon a cheaper supply of coal, but the management would not advise a change from present use.

Cost of fuel in 1896–97, $3,792 93; daily cost, $10 39.

Cost of fuel for 1897–98, $3,392 05; daily cost, $9 29.

HEATING.

Heating is effected by direct radiation, or hot air, and the ventilating system is the same, except that cold air is forced by fans over steam coils and heated; thence through air shafts to the various wards. Some portions of the building, like officers' quarters, are heated by steam radiators. The system is perfect of its kind; the present condition is fair and needs no improvement or addition until more buildings are constructed.

WATER.

The irrigation and sewerage flushing are effected by our general system, which comprises 60 inches of Bear Valley water purchased by the State when the ground was first bought. This water is represented by 720 shares of the North Fork ditch, which supplies Highland and vicinity, and consists in a prior right to Bear Valley water. Water for domestic use was developed by the management two years ago, on land belonging to the State, which thus far has furnished all needed supply for culinary and drinking purposes. The system is reasonably perfect, occasionally, however, requiring additional pipe, flumes, and ditches as improvements are extended.

Cost of Water.

Water for domestic purposes	$700
North Fork water	$40,000
Tunnel for domestic	1,000
Piping and labor	4,000
Fluming and ditching	2,000
Making a total of	$47,000

Twenty inches more of water is needed, and its purchase would be a good investment for the State.

LIGHTING.

Lighting is effected by electricity, supplemented by gas when necessity demands. At present, under two years' contract with Redlands Light and Power Company, by which they furnish lights not to exceed 650, at $325 per month, for all buildings, including shops, laundry, stables, cottages, dairy, and barn. The system is as perfect as a large system supplying light and power to various manufactories and villages over the same wire can be. The expense of plant and installation is borne by company furnishing light, except wiring the buildings, which is part of original cost of construction.

Present condition is good and cannot be improved, but can be added to if necessary.

LAUNDRIES.

The laundry is not sufficient to meet the present requirements of the institution.

The hot-water boiler is imperfect, and ought to be replaced.

The cost of laundry is $6,000. The system is fair, but new band irons, new washers, new body ironer, and new hot-water boiler, and enlargement of washroom are needed, the cost of which would be about $2,000.

SEWERAGE.

There is an outfall sewer with catch basins, the working of which is satisfactory, and all sewage and sewer water are utilized on ranch. Cost of sewer is $5,000.

The system can be enlarged if necessary, but is sufficient for a number of years.

The wards are supplied with automatic closets. Would not advise them for new buildings, except in violent wards. The lavatory floors in all wards need renewal, which would cost $1,000.

BATHING.

There are bathtubs in lavatories of each ward for inmates, and when needed, for employés, and the system is perfect of its kind.

The cost for piping water to hospital building and supplying water power therefor is $15,000. Its present condition is fair, but can be improved. There should be needle and shower baths for the use of all patients, and one general bathhouse for male and one for female patients, or the changes should be made in the lavatories, supplying shower or needle baths for each ward.

POWER

Is electric power, under two years' contract with Redlands Electric Light and Power Company, by which they supply 20 horse-power for running laundry, ice machine, heating, and ventilating fans. The system is perfect.

The plant was furnished without cost to the State, is in a satisfactory condition so far as State purposes are concerned, and can be enlarged as facilities for patients are increased.

Light and power are supplemented by hospital plant, which consists of a battery and two Baker & Wilcox 73 horse-power boilers, and a 50 horse-power Corliss engine, and 500-light dynamos, which can be switched on in five minutes to furnish either light or power, as steam is always kept in boilers for cooking and heating purposes. Another battery of boilers, of the same kind and size as those now installed, is needed, which will cost in the neighborhood of $3,000, probably less.

CAPACITY.

The intended capacity of the hospital is 390 patients, and is divided into six wards—four male and two female.

PATIENTS.

There are at present 596 patients out on parole. There have been 86 admitted during the last fiscal year.

The nationality of the patients is as follows: California, 109; other states, 734; foreign born, 480; total, 1323.

The percentage of other cities and states is as follows: 1894–96, 60.15; 1896–98, 44.90.

The percentage of cases by years is as follows: 1893–94, 14.83; 1894–95, 25.51; 1895–96, 47.22; 1896–97, 52.67; 1897–98, 47.73; entire period, 37.59.

The percentage of escapes by years is as follows: 1893–94, .05; 1894–95, .04; 1895–96, .01; 1896–97, .009.

The percentage of discharges, by years, is as follows: 1893–94, 23.79; 1894–95, 45.68; 1895–96, 40.74; 1896–97, 34.45; 1897–98, 33.22; entire period, 56.68.

The cost of maintaining per annum, figured on cost of food, clothing and furniture, and attendance, and all operating expenses for 1897–98, was $95,000. Maintenance, cost of plant, and operating expenses for one year, with 5 per cent added to cost of plant, $562,500.

Private contributions to patients, of money, clothing, etc., are received by the Medical Superintendent, and distributed by his secretary, at the request of the Matron or Supervisor, on order of patient, relative, or guardian.

Accounts are kept in a cash book and patients' ledger, and are vised by the Board of Managers and Medical Superintendent.

Patients may be visited by relatives or guardians any day excepting Sunday or holidays, between 10 A. M. and 4 P. M.; if not a relative or guardian, the visitor must present an order.

The following amounts have been received for care from pay patients:

Forty-fifth fiscal year	$2,599 25
Forty-sixth fiscal year	4,082 35
Forty-seventh fiscal year	4,204 00
Forty-eighth fiscal year	4,076 50
Forty-ninth fiscal year	8,294 84
	$23,256 94

ACCOUNTS.

The receipts are kept in cash books, and the disbursements in disbursement books, provided by Commission in Lunacy for that purpose.

Schedule of bills allowed must agree with Steward's schedule, which is checked by monthly balance, and sworn statement of cashier of bank of deposit.

Requisitions issued over signature of Medical Superintendent, and the stub preserved in Medical Superintendent's office. Requisition, as evidence that goods were delivered, is preserved by Steward, with signature of receipt.

General inventory is taken every six months upon blanks as originally furnished by State Board of Examiners, and an inventory of stores every month, by order of the Medical Superintendent, by heads of departments; the balance of undistributed supplies which have been purchased are kept in the Steward's storeroom, or stand under his control.

Stores distributed, but unconsumed, are in charge of the heads of the different departments to which they have been distributed. The furniture, bedding, etc., in wards, corridors, etc., are in charge of the Supervisor, and Matron, or head. All distribution is made under the direction of the Medical Superintendent, or his representative.

No account is kept as to purchases, whether they be on contract or not. The ratio of the one to the other varies greatly according to requirements; 38 to 40 per cent would probably be about the average. Same answer applies as to contract goods.

With rare exceptions, purchases are made from leading dealers in Southern California, and general delivery is made at Patton Station, which is located on the grounds of the institution. There is a siding for delivering of carload lots of wood, coal, fuel, lumber, etc., convenient for use.

The hospital's system keeps account of items, rather than of values, and is perfect for that purpose. They can trace and account for every article purchased, received, and distributed or remaining on hand.

All moneys for patients are entered in the patient's cash book, and thence in the patient's ledger. The large bulk of this money is turned over to the Treasurer, the hospital only keeping on hand enough to purchase such small items as the patients may request.

All patients' accounts are kept by the Medical Superintendent's secretary, and are vised by the Superintendent monthly, sometimes oftener.

Books are experted twice in two years. Monthly balance sheet is taken and preserved in cash book.

CLINICAL RECORDS, ETC.

The clinical records are kept upon loose blanks, as follows: Examination or admission blank; Supervisor's daily report blank; morning report of attendants in charge of wards blank; clinical report blank.

When a patient is received at the hospital, the physician makes a thorough examination of the physical and mental condition of the patient, filling out the "examination or admission" blank, better termed "condition on admission" blank. This document is then filed with the copy of commitment. The prescriptions made by the physicians are kept in a separate book for each ward, and as they are filled by the druggist, are copied in a record book. All surgical work performed upon patients is kept track of.

Upon the "Supervisor's daily report" blank, the Supervisor makes a daily report covering the male department, and includes the following subjects or headings: Census; restraint; physical and mental condition of patients; special diet for hospital patients; remarks. The Matron makes a similar report of the female department upon the "Matron's daily report" blank, which includes the same heads as the Supervisor's.

The head attendant of each ward makes a daily report upon the "morning report of attendants in charge of wards" blank, which includes the census of each ward, the number of beds, etc., and the different departments in which the patients are employed. He also fills the "leave of absence of attendant's" blank, which contains the following headings: Accidents; repairs needed; patients found wet or dirty; patients transferred from one ward to another.

On the "clinical record" blank, the head attendant writes up the physical and mental condition of patients in his or her ward. In the case of chronic patients, these are filled out every three months, for acute cases every week, and some are made out daily.

The following suggestion is made by Dr. A. M. Campbell, Superintendent: "In regard to keeping the clinical records of this hospital, I

would suggest that a 'clinical record book' be adopted similar to the blank form now in your possession, which was made up here and transmitted some time ago to the State Commission in Lunacy. Each of these books should contain 400 pages, and be for 100 patients, allowing four pages to each patient. On the first page should be printed at the head 'A Synopsis of History,' containing headings for each synopsis. Underneath this should be printed the form of the blank commitment, and underneath this the form of the blank for the 'Condition on Admission,' and following this would be the heading for 'Clinical Notes.' In this book would be placed a condensed history of each case, and this work could be done by the clerks in the office without additional expense. The beauty and convenience of this arrangement could hardly be appreciated by one not acquainted with this branch of the hospital service. Instead of having clinical records of the patients scattered through innumerable blanks, entailing untold labor at different times in going through these blanks to ascertain the history of a case, wherever, for example, it is necessary to go before a court, or in obtaining the history of patients for other purposes, in this arrangement specified we would have a concise history of each case on four pages. If any case should cover more than four pages, such case should be transferred to a 'Transfer Book,' containing the same number of pages (400) for the purpose, and the case continued without making copy of the previous history in the book from which it was transferred."

EMPLOYÉS.

Decrease, about 30 per cent of pay since opening hospital.

Average for 1893	42⅔%
Average for 1894	46¾
Average for 1895	53⅝
Average for 1896	56½
Average for 1897	63⅙

There is a very small per cent of increase of employés to a very large per cent of increase of patients.

The principal cause of discharges is incapacity, negligence, infringement of rules, and immorality.

The payroll is $2,916 per month.

Accommodations for employés are extremely limited.

All employés are considered on duty while they stay in its employ. Attendants have half a day each week, 52 half days, 12 full days during the year, and 6 days every six month; 4 half days and 1 whole day during the month.

Various department time books, payroll books, and monthly report of Medical Superintendent to the board show those employed, resigned, and discharged.

Civil service rules are in force in this institution, and are strictly adhered to. All employés engaged here have either passed examination as to their fitness, physical and otherwise, or else hold their positions understanding that they are subject to such examination at the will of the proper authorities. This system has always been in effect more or less, and particularly since March 31, 1897. The effect is salutary and of great value.

PRODUCED BY HOSPITAL.

The average amount of milk produced per month for the fiscal year ending June 30, 1898, was 1626 gallons, which was an increase on previous years, and the product is steadily increasing.

Excepting ice, and wardrobes, benches, etc., made by the carpenter for use, the institution cannot properly be said to do any manufacturing. It produces alfalfa, hay, pumpkins, beets, corn, and other cow feed; citrus and deciduous fruits, grapes, berries, and garden truck; also milk, of varying but of considerable value. During the greater part of the year purchases are made of few vegetables or fresh pork. With an abundance of water for irrigation the production of fruit and vegetables might be increased to the extent of 10, 20, or perhaps 30 per cent.

Ten to fifteen female inmates assist in the sewing-room; about the same number (male and female) in the laundry; a dozen and upward (males) keep the doorways and grounds in order; twenty to thirty work about the farm, orchards, garden, and with the teams; fifty and upward are employed in the kitchen, bakery, sculleries, and dining-rooms, and twelve to twenty about the shops, stable, and dairy. In all, on an average, there are probably about 150 to 175 inmates employed, with benefit to themselves and profit to the State, and with more attendants to supervise, 200 male and 80 female patients could be employed.

In addition to the above mentioned, poultry might be raised and the citrus orchards extended to grounds now devoted to alfalfa.

With more water and the utilization of more acreage for citrus and deciduous fruits, the land could be made profitable, and go a long ways toward making the institution self-supporting.

This question was referred to the Steward, who sends for reply that the question is too indefinite and cannot be answered by him.

FURNITURE.

The furniture in corridors and wards is plain, durable, substantial, and inexpensive; in the officers' quarters, neat, comfortable, and modest; in the dormitories, solid, substantial, and as indestructible as may be, and in the kitchen, modern and convenient.

FOOD.

The food consists of meat, vegetables, etc., cooked by steam or on coal ranges; bread, cakes, etc., in bake ovens; all served by cars to patients, employés, and officers in their respectlve dining-rooms.

The supplies are fresh beef, mutton, veal, and pork; hams and bacon, salted and cured; fresh and salt fish; wheat, graham, and corn bread; rolled oats; potatoes (Irish and sweet); rice, beans, dried fruits, eggs, butter, syrup, coffee, tea, sugar, milk, etc.

LIBRARY.

The library contains some 480 volumes. Included in this number are 185 song books for use in the chapel, leaving a total of 295 volumes of miscellaneous reading matter. Of this number 100 volumes were

purchased for the sum of $62 49. The song books cost $21 45. The remaining 195 volumes were donations, principally by a philanthropist of New York (the State paying the freight from New York), and by friends and patients leaving the institution. Entertainments, dances, and musicales were given with excellent success, and out of the proceeds a library fund created with which to purchase books.

The distribution of the books, which are numbered, is as follows: The head attendant of each ward takes the number of books he returns from his ward, the date and number of each book being noted in a book kept for the purpose. At the expiration of two weeks, unless permission is given to keep them longer, the books are returned to the library. Employés are treated in the same manner. The books are taken, checked, and returned to the case, and the party takes another book if desired.

RELIGIOUS SERVICES

Are Protestant and Catholic; Protestant every Sunday, and Catholic at the convenience and will of the priest in charge of parish.

No educational advantages are offered.

ADVERTISING FOR SUPPLIES

Is done in accordance with the lunacy law, once a year, or as directed by the Commission in Lunacy.

MAINTENANCE, ETC.

Our system of distribution and accounts does not permit an accurate answer to this question. Patients who are actively employed, receive the same food, in quality and quantity, as other employés; the number of patients requiring eggs, an abundance of milk, and other special diet, is continually varying. Each month the total cost of support is divided by the number to whom it is distributed. This gives for inmates alone an average per capita of 38 to 42 cents per day, and for inmates and all others an average per capita of about 32 to 38 cents per day, varying according to exigencies of requirements, which applies almost wholly to inmates.

CONTINGENT FUND.

About $600 per month, all of it for permanent and useful improvements. All has been used for repairs and improvements.

Mar. 1, 1898—Stamps and postage	$996 60
Mar. 2, 1898—Music and band	610 85
Mar. 31, 1898—Freight	452 20
Dec. 31, 1897—Telephone	440 40
Mar. 15, 1898—Telegraph	247 76
Mar. 26, 1898—Miscellaneous	1,962 27
Mar. 17, 1898—Expressage	298 25
Mar. 23, 1898—Traveling expenses	775 65
Oct. 5, 1898—Rewards and returned escapes	490 25
Mar. 23, 1898—Discharged and paroled patients	554 02
Total	$6,828 05
Amount paid out from contingent fund for repairs and permanent improvement up to June 30, 1898	6,786 34
Balance of contingent fund on hand June 30, 1898	1,122 51

BOOKKEEPING.

The present system is fairly suitable, but can be improved upon.

APPROPRIATIONS.

The following are the amounts appropriated by the Legislature from the opening of the hospital to June 30, 1898, for maintenance and support only:

May 26, 1898, amount placed to the credit of the Southern California Hospital (insane) at the date of appointment of the Trustees. (The original amount in said fund having been reduced $115,000 by warrant for payment of land purchased by commissioner)	$235,000 00
Management and maintenance, forty-fourth fiscal year	7,000 00
Support, forty-fifth and forty-sixth fiscal years	60,000 00
Deficiency in support, forty-fifth fiscal year	47,743 65
Deficiency in appropriations, April 6, 1891, and March 3, 1893	1,486 41
Deficiency in support, fortieth fiscal year	20,000 00
Support, forty-sixth fiscal year	25,000 00
Support, forty-seventh and forty-eighth fiscal years	116,800 00
Deficiency in support, forty-seventh fiscal year	12,000 00
Deficiency in support, forty-eighth fiscal year	20,000 00
Support, forty-ninth and fiftieth fiscal years	120,000 00
Salaries, forty-ninth and fiftieth fiscal years	70,000 00
Total	$735,030 06

SUMMARY SHOWING COST OF FUEL, LIGHT, POWER, ETC.

	1894–95.	1895–96.	1896–97.	1897–98.
Cost of light	$1,617 22	$2,283 33	$2,916 66	$2,734 58
Cost of power	2,866 45	1,141 67	1,458 34	1,447 92
Cost of water	540 00	360 00	840 00	972 00
Cost of maintenance	42,352 03	31,482 29	40,340 59	55,483 12
Cost per capita*	248 78	152 72	149 36	149 05
Cost per capita per day	68.10	41.70	40.90	40.80
Payroll	32,541 98	34,246 14	39,315 46	39,516 88
Cost of laundry	1,358 47	1,372 30	1,449 93	1,499 53
Cost of sewer				5,000 00

* Support and salary.

PER CAPITA COST PER ANNUM.

Average No. of Patients	Salaries	Food	Medicine	Clothing	Furniture	Light	Fuel	Power	Farm	Stationery	Telephone and Telegraph	Sundries
291	$111 83	$49 57	$3 90	$3 31	$0 17	$5 56	$21 35	$9 85	$4 66	$1 50	$0 81	$36 27
415	82 52	34 35	66	1 94	05	5 50	10 45	2 75	1 64	42	13	12 31
513	76 63	30 70	1 38	2 21	14	5 68	10 24	2 84	1 53	73	21	17 07
534	73 94	35 49	1 35	3 14	1 48	5 12	9 82	2 71	1 41	48	31	13 80

Total cost in Southern California, 1894–95	$248 78
Total cost in Southern California, 1895–96	152 72
Total cost in Southern California, 1896–97	149 36
Total cost in Southern California, 1897–98	149 05

STOCKTON STATE HOSPITAL.

LOCATION.

The Stockton State Hospital is located at Stockton, San Joaquin County, within half a mile of the Central Pacific Railroad station and about a mile from the steamboat landings and the depot of the San Francisco and San Joaquin Valley Railroad.

HISTORY.

In 1853 the State General Hospital was abolished by Act of Legislature, and the Insane Asylum of California established at Stockton. The hospital grounds proper consist of some 114 acres, donated, with the exception of about four blocks, by the late Captain C. M. Weber to the State in 1853. Of the four blocks referred to, one was purchased by the State, in 1863, for $2,000; the second, in 1864, for $2,500; three quarters of the third, in 1889, for $2,500; the remaining quarter, in 1894, for $3,020; and the fourth block, in 1896, for $4,000. To this must be added about 15 acres, purchased in 1875, for a cemetery, at a cost of $2,750; making the total cost of the real estate at the hospital $16,770.

ACREAGE.

The total acreage is 129 acres, thus utilized:

Buildings, airing courts, and grounds	14 acres
Vegetable gardens	15 acres
Alfalfa and other hay crops	57 acres
Parks, lawns, flower gardens	32 acres
Corrals, streets, walks, reservoir excavation	8 acres
Graves in cemetery	3 acres
Total	129 acres

About 60 acres are irrigated; 5 more will soon be added, at a cost of $50, and the total cost of irrigation per year is $400.

BUILDINGS.

In 1853, the south wing of the original asylum building was erected, at an approximate cost of $33,000; in 1854, the center was built for $80,000; in 1855, the kitchen, dining-room, and other improvements were made for $15,000; in 1856 and 1857, the north wing was built for $40,000. In 1863, a ward was built over the dining-room and kitchen, and two wards extended eastward from the north wing (since removed), with airing courts, etc., at a cost of about $60,000. In 1895, the south wing was removed and a new structure erected in its place, and the rest of the building thoroughly repaired, at a cost of about $20,000.

In 1864, the building of a hospital for women patients was commenced, and finally completed in 1868, with engine-room, stack, laundry, etc., at a cost of $250,000.

In 1871 and 1872, the two-story building in which are the steward's office, storerooms, the upholsterer's shop, room for outside employés, and Ward No. 24, occupied by the Chinese patients, was erected, at a cost of $33,000.

In 1875, the asylum property was inclosed by a substantial fence, with appropriate gateways, at a cost of $2,750.

In 1877, a brick water-tower was built south of the Steward's department building, 51 feet high from the ground line, 16 feet square at the base, and 14 feet at the top. At an elevation of 35 feet it contains an iron tank 8 feet in diameter and 12 feet deep; and on the roof is another iron tank, 11 feet in diameter and 9 feet deep; costing in all, $3,450.

In 1879, a horse stable was built for $2,415; in 1886, a dairy barn for $5,000; and in 1889, a hay barn for $3,875.

In 1885, the new building of the men's department was completed, at a cost of $224,000.

In 1890, a boiler-house, engine-room, workshops, lavatories, reading-room for patients, and morgue in rear of the male department, and lavatories, ironing-room, and associate dining-room in connection with the women's department, and three residences for physicians, were built, at a cost of about $54,000. (The three residences cost $7,500 each.) The cost exceeded the appropriation, and the excess was paid out of the contingent fund.

In 1898, a residence for the Superintendent was completed for $8,000, and the amount was paid out of the contingent fund.

From time to time several small structures have been built, as follows: A lime house, for $400; a paint shop, for $150; a tin shop, for $50; a driving shed, for $150; a toolhouse, for $50; a straw barn, for $150; a vegetable shed, at men's department, for $200; a vegetable house, at women's department, for $400; a house at the old sewer pumping station, for $1,500; a house at the irrigating pumping station, for $2,000; three propagating houses and conservatory, for $1,800.

The total cost of the buildings, including the fence, has been $847,940.

BOARD OF MANAGERS.

The Board of Managers consists of five members, as follows:

A. McDonald, of San José, reappointed March 13, 1897.

Joseph Steffens, of Sacramento, appointed January 10, 1895.

John N. Woods, of Stockton, appointed March 10, 1897.

John T. Doyle, of Stockton, appointed March 10, 1897.

John C. Thompson, of Stockton, appointed December 1, 1898, to fill unexpired term of J. D. McDougald, deceased.

The Managers receive $10 a day for attendance at meetings, and while in the actual service of the State, and their necessary traveling and other expenses, to be paid as other current expenditures of the hospital.

The Treasurer and Secretary of the Board of Managers is James H. Hough of Stockton (salary, $70 a month), who furnishes his own office.

The Managers meet in regular session once a month, and usually have one or more adjourned regular sessions. In addition, stated meetings are held whenever contracts for furnishing supples are to be awarded. No charge has been made for adjourned regular sessions, except when examining proposals and awarding contracts.

During the year ending June 30, 1898, the following sums were paid to the members of the Board of Managers, out of the support fund:

J. D. McDougald	$330 00
John Doyle	333 40
Joseph Steffens	364 10
A. McDonald	373 50
John N. Woods	396 00

The records show that the Board of Managers held thirty-nine meetings during the period above stated.

VENTILATION.

The Abraham system of ventilation is in use, together with bar doors and open windows. The results are highly satisfactory, and no change is needed.

FUEL.

Coal and natural gas are used for power, heat, and light. There are two gas wells, one in the rear of the men's department, the other in the rear of the women's department. The output of gas was about 30,000 cubic feet per twenty-four hours in 1896, but has probably diminished somewhat since. In 1888, the sum of $40,000 was appropriated to bore wells to supply the hospital with water, light, and fuel. An additional gas well would be a valuable acquisition. The cost thereof would be about $15,000, and would largely reduce the coal bill. The coal bills for the years (fiscal) ending June 30, were:

1897	$9,677 71
1898	7,470 51

The yearly bills for manufactured gas were as follows:

1891	$2,922 49
1892	2,558 01
1893	525 05

In 1893 the product of the gas wells was sufficient to do away with the necessity of purchasing manufactured gas.

HEATING.

The indirect system of steam heating by coils is in use in the basement in the women's department, and in the new building of the men's department. It can be greatly improved by covering the pipes with non-conducting material, at a cost of about $1,000. At present the old building of the men's department is heated by base-burner stoves, which answer passably well, and a hot-water system is partially provided for. A furnace, boiler, and some piping and radiators are required to complete the system, at an estimated cost of $3,000.

WATER.

The water is pumped by steam and gas power into elevated tanks, and thence distributed by gravitation. The plumbing is old, and much of it will have to be replaced in time.

LIGHTING.

Natural gas has been used for lighting since January, 1893. It is quite impossible to segregate the cost thereof, as the gas is used for power, heat, and cooking, as well as for lighting. The cost of gas mantles, chimneys, etc., for the year ending June 30, 1898, was $493 95.

LAUNDRIES.

There are two laundries—one in connection with the men's department, furnished with one Pacific washing machine, one Troy brass-cylinder washer, one blanket washer, one Troy hydro-extractor, one Troy steam drier, two 80-gallon caldrons, one 50-gallon caldron, and three 125-gallon galvanized iron tanks, with other necessary appliances, valued at $1,395; and the other, in connection with the women's department, furnished with two Troy brass-cylinder washers, one Told-

hurst extractor, one Pacific mangle, and one Troy shirt-ironer, with other necessary appliances, valued at $2,240. The laundries, with the exception of the drying facilities, are generally satisfactory. About $1,500 could be judiciously expended in that direction.

SEWERAGE.

The sewer system is connected with the sewerage system of the City of Stockton. By this system the sewage flows by gravity from the hospital grounds to the receiving cistern of the City of Stockton, whence it is pumped and piped to the San Joaquin River. The cost of this connection was $10,000. The system is entirely satisfactory. The watercloset system is the automatic flush-tank system.

BATHING.

There are three swimming tanks, supplied with water from the gas wells, at a temperature of about 88°, the cost of which was about $5,750. It is not only a success from an economical point of view, but also a source of pleasure to the patients. In addition to these tanks, there are bathing facilities in every ward. No improvement is needed at present.

CAPACITY.

The theoretical capacity of the men's department is 1,000; of the women's, 500; but there is comfortable accommodation in the men's department for 1,060; in the women's, for 515. Any considerable number beyond this would necessitate crowding.

PATIENTS.

The number of patients in the hospital June 30, 1898, was: Males, 1,039; females, 518. Out on parole: Males, 6; females, 9. The number of native born was 623; foreign born, 925; of unknown nativity, 9. The admissions for the fiscal year ending June 30, 1898, were 213; of these, 117 were native born, 95 foreign, and 1 of unknown nativity. The discharges for the year 1898 were 119, a percentage of 39.01; the cures for the same time were 75, a percentage of 26.23.

COST OF MAINTENANCE.

Year.	Amount.	Per Capita per Diem.
1891	$224,558 20	$0 38.9
1892	215,514 15	37.3
1893	219,231 22	36.6
1894	307,794 33	36.2
1895	201,127 99	36.4
1896	194,198 97	35.5
1897	196,459 16	35.2
1898	193,733 65	34.5

Cost of Maintenance and Plant, With 5 Per Cent Interest Added.

Year.	Amount.
1891	$950,000 00
1892	960,000 00
1893	970,000 00
1894	980,000 00
1895	990,000 00
1896	1,000,000 00
1897	1,005,000 00
1898	1,013,225 00

PRIVATE CONTRIBUTIONS.

Private contributions of money to the patients are received by the Superintendent, and regular receipts given therefor. An account is kept thereof by the Superintendent's secretary. The money is disbursed under the direction of the Superintendent, and vouchers for all disbursements are received and filed. The Supervisor and Matron, in their respective departments, purchase most of the articles bought by these contributions.

The clothing distributed is given in charge of the Supervisor and Matron. They keep a record of all clothing received, turn the same over to the proper attendant, who also keeps a record and is accountable for all clothing in his or her charge.

Relatives are allowed to visit patients at all times; others can come between the hours of 9 A. M. and 12 M., and 2 and 4 P. M., Sundays and holidays excepted. Anything but trifling gifts, such as tobacco, fruit, etc., direct to a patient, is taken charge of by his or her attendant.

The amount received from pay patients for the fiscal year ending June 30, from 1891 to 1898, inclusive, was $92,664 34.

ACCOUNTS.

Money for the board and care of pay patients is received by the Superintendent, entered in the cash book, and, at the end of each month, paid to the Treasurer, as also are the proceeds of the Steward's sales. A detailed statement is made in duplicate, one of which is retained by the Treasurer, the other is receipted, returned to the Superintendent, and filed.

The expenditures are made by the Board of Managers and the account kept by the Treasurer, who reports monthly to the Board with vouchers.

Written requisitions for all supplies are made by the Superintendent on the Steward. When the Steward fills the requisition, the person to whom the supplies are delivered receipts for the same. The requisition is then duly filed. The stocks in hand are properly housed, and under the charge of the Steward. At the end of each month an account of stock is taken, and submitted to the Board of Managers at the regular meeting. A monthly inventory is made of all furniture, furnishings, and supplies in all shops, engine-rooms, laundries, kitchens, dining-rooms, farm, garden, and dairy, and a general inventory at the end of each fiscal year.

SUPPLIES.

The amount of contract and non-contract goods purchased for the fiscal year ending June 30th was:

Year.	Contract.	Non-Contract.
1891	$97,785 42	$28,167 35
1892	100,459 18	25,361 73
1893	93,536 33	26,720 86
1894	86,353 56	24,368 09
1895	83,073 26	17,961 72
1896	72,896 36	22,035 03
1897	78,005 27	22,494 62
1898	77,116 21	20,480 75

Non-contract goods are purchased at the best terms, and delivered at the hospital.

CLINICAL RECORDS.

The clinical examinations consist of a careful investigation into the family history, personal history, and present condition of all cases on admission, and a daily report of any changes in the mental condition of new cases, of the symptoms and course of all cases of physical ailments, of traumatism occurring among the patients, and of such prominent symptoms in chronic cases which affect the welfare of the patient himself, and his surroundings.

EMPLOYÉS.

There has been no corresponding increase or decrease of employés, as compared with increase or decrease of patients, as the following table shows:

Year.	Average Number of Patients.	Payroll.
1891	1581	$95,907 20
1892	1580	92,743 74
1893	1639	92,941 92
1894	1573	96,858 29
1895	1513	98,225 20
1896	1492	96,349 19
1897	1529	94,137 30
1898	1537	96,408 63

The changes in the payroll have been caused mainly by the increase or decrease of outside employés, who have accommodations in the buildings. Hall attendants are allowed absence from duty one afternoon of each week from 1:30 to 5 P. M., and one afternoon of each week from 1:30 to 11:30 P. M. They are also allowed absence from duty every other evening from 6:30 to 11:30 P. M., married men remaining out until 6 o'clock next morning, and also half a day every other Sunday. They are allowed a vacation of one week every six months.

Two references are required of all applicants for positions. The examinations are physical and educational.

The salaries of Superintendent, officers, and other employés amount to $8,161 65 per month.

PRODUCTIONS.

The hospital produces beets, tomatoes, turnips, carrots, parsnips, peas, pumpkins, corn, cucumbers, lettuce, cabbage, onions, artichokes, and other vegetables, beef, eggs and milk, chickens, ducks, turkeys, hay, etc., in abundance.

The purchase of shoemaking machinery for about $400 would make it possible to produce all the shoes worn by the patients, at but little increase in the running expenses.

EMPLOYMENT OF PATIENTS.

The number of patients employed in the halls, men's department, is 114; women's department, 84; employed in the garden, dairy, stable, shops, etc., 163 men; employed in the laundry, ironing-room, and sewing-room, 41 women. No more inmate labor could be utilized under present conditions, and little or nothing could be profitably produced for sale. Inmate labor is very little employed in the clerical or administrative departments.

An appropriation of $30,000 will be asked for to purchase and stock land for a dairy and truck farm, which will permit the employment of 100 additional male inmates.

FURNITURE.

All the furniture is plain, substantial and good. The bedsteads are mainly iron, with woven wire mattresses, and furnished with hair, fibre and moss mattresses.

FOOD.

The food is cooked by coal, steam, and natural gas. It is distributed to the several dining-rooms by hand cars and dumb waiters, and served by the attendants with the assistance of the working patients. There is a good variety of all of the staple articles of food, including vegetables. There is, however, a marked deficiency of milk.

LIBRARY.

About 600 volumes, acquired by donation, constitute the library. Whenever a patient wants a book, he is brought by his attendant to the person having the custody of the library, and allowed to select one.

RELIGIOUS SERVICES.

Recently there have been no religious services.

RESTRAINT.

The patients are restrained, when necessary, as a protection to themselves and to others. The restraining is under the supervision of the physicians, and is used no more and no longer than necessity requires.

ADVERTISING.

Advertisements for supplies are made semi-annually, in accordance with the needs of the hospital, so far as these can be ascertained. They are by short notices published in newspapers for four successive weeks.

CONTINGENT FUND.

The amount of the contingent fund, since it was first inaugurated in 1883, is $249,858 75, and $246,409 95 has been drawn therefrom—for repairs, $48,227; for permanent improvements, $133,193 98; for incidentals, $55,668 35, and for real estate, $9,520.

BOOKKEEPING.

The present system of bookkeeping is a modification of and an extension of the system in use here for years past. It is fairly satisfactory, and serves as a check on articles supplied to each department. The management believes it could be simplified to advantage.

COST OF MAINTENANCE.

The following table gives the per capita cost of patients by years. Included in salaries is the pay of the Directors and Secretary. Wines and liquors are included in medicines; blankets, crockery ware, hard-

ware, tinware, and bedding, in furniture. Fuel, light, and power cannot be segregated.

Per Capita Cost per Diem in Cents.

	1891	1892	1893	1894	1895	1896	1897	1898
Salaries	16.90	16.53	15.81	17.15	18.10	17.93	17.21	17.49
Food	11.36	11.32	10.91	9.90	9.08	9.04	10.13	9.49
Medicines	.30	.28	.26	.30	.42	.40	.43	.34
Clothing	2.03	2.34	2.96	2.08	1.41	1.80	1.82	1.80
Furniture	1.04	.90	1.07	1.12	1.26	1.49	.92	.83
Fuel, light, and power	4.52	3.34	2.97	2.37	2.45	1.50	.175	1.38
Farm, garden, and dairy	.76	.79	.64	.53	.61	.53	.53	.78
Stationery	.10	.09	.06	.05	.08	.05	.07	.05
Telegraph, telephone, and express			.04	.03	.03	.04	.02	.03
Miscellaneous	1.83	1.77	1.90	2.75	2.99	2.76	2.32	2.30
	38.84	37.35	36.62	36.28	36.43	35.54	35.18	34.49

STATE PRISONS AND REFORMATORIES.

STATE PRISON AT SAN QUENTIN.

LOCATION.

The California State Prison at San Quentin is located in Marin County, on a peninsula jutting into the Bay of San Francisco, about 3½ miles south of San Rafael, the county seat. It is reached from San Francisco by two lines of railroad—the North Pacific Coast Railroad, via Sausalito and San Rafael to Point San Quentin, distant one half mile east from the prison, or by the San Francisco and North Pacific Railroad, via Tiburon to Greenbrae, distant 2 miles west from the prison, and thence by stage. Nearly all freight from and to the prison is carried by a steamer, which makes irregular trips and carries no passengers.

BOARD OF PRISON DIRECTORS.

The Board of Prison Directors consists of five persons, appointed as provided by the Constitution of this State (Article X). The members of the present board are:

Daniel E. Hayes, of San Francisco; date of appointment, May 25, 1892; term expires, January, 1900.

Rob't T. Devlin, of Sacramento; date of appointment, July, 1897; term expires, January, 1902.

Rob't M. Fitzgerald, of Oakland; date of appointment, March 16, 1895; term expires, January, 1904.

Jas. H. Wilkins, of San Rafael; date of appointment, April 10, 1896; term expires, January, 1906.

Don Ray, of Galt; date of appointment, February, 1897, to take effect, January, 1898; term expires, January, 1908.

The Directors receive no fixed per diem or mileage. Section 4, Article X, Constitution of California, provides that they "shall receive no compensation, other than reasonable traveling and other expenses incurred while engaged in the performance of official duties."

The duties of the Secretary of the Board of Directors are performed by the Clerks of the prison. The present Clerk of the prison is Joseph V. Ellis, who resides at the prison. His salary is $1,800 per annum.

The Board of Directors meet at the prison regularly once a month. Special meetings may be and are held, when necessary, at the call of the President of the Board.

There have been paid to the various members of the Board of Directors, for "traveling and other expenses," during the fiscal year ending June 30, 1898, out of the "contingent fund," $3,628 95.

The Warden and Clerk of this prison are appointed by the Board of

Directors for a term of four years, and all other officers and employés are appointed by the Warden, subject to removal or discharge at his pleasure.

ACREAGE.

The total area owned by the State is 330.09 acres, representing a value or cost, as per Clerk's books, of $50,910 55. Of this area, 135.35 acres are tide lands, about 20 acres of which have been reclaimed; the balance (115 acres) is still covered by tide water.

The 195.5 acres on the main land are of very poor quality; they are nearly all clay lands, and the top soil was stripped off them for brick in former years. The buildings and grounds cover about 10 acres; the vegetable garden about 3 acres; the hog and chicken ranches about 10 acres; about one half the remainder can be and is cultivated for hay; the other half is barren and non-productive.

BUILDINGS.

The various buildings within and adjoining the prison walls are as follows:

Shop building, size 60x400 feet, four stories high, formerly occupied by the sash and door factory, furniture factory, and harness shop, all of which industries were abandoned in 1887 to 1889.

Four cell buildings, each 26x180 feet, three tiers high.

One building, built and added to at various times, containing prisoners' kitchen, bakery and dining-room, hospital, library and chapel, tin, shoe, and tailor shops, and dungeon.

One building, containing the offices of the Captain of the Yard and Turnkey, clothing-room, barber shops, etc., on the lower floor, and the female prison on the upper floor.

Front gate building.

Lower gate building.

One building, two stories high, the first used for officers' and guards' quarters.

All the foregoing buildings are built of brick and stone.

On the grounds outside of the prison walls there are the administration building, built of brick, containing the Board of Directors' room, Warden's and Clerk's offices, and on the lower floor the butcher shop; one stable, of brick; seven guard posts, brick; two brick dwelling houses; fourteen frame dwelling houses.

The value of all the above enumerated buildings, as per Clerk's books, is $492,788 61. Besides these buildings there are the jute mills and three warehouses, all built of brick, the approximate cost of which is $98,000.

No other buildings are in course of erection, and there is no existing appropriation for any contemplated buildings.

VENTILATION.

Ventilation of the cell buildings is provided for by flues running from the back of the cells to the roofs of the buildings, and the system appears to be quite satisfactory in its results.

FUEL.

The fuel used is principally coal for power, heating, and cooking purposes. No fuel of any kind is obtainable on the prison lands, and the needs of the prison are supplied by purchase under contract.

The total value of the fuel consumed during the fiscal year ending June 30, 1898, was $22,022 57. Of this amount, the cost of fuel used for power in the jute mills was $17,075 45, and the balance of $4,947 12 represents the cost of all fuel used for all purposes by the prison proper during the year.

HEATING.

There is no heating system in any part of the prison, excepting the jute mills. The system there consists of several lines of return steam pipes running across the mill, steam being supplied to them by connection with the boilers of the mills. The climate is so temperate that, even during the winter, this heating system is not always in use.

WATER.

Water is supplied to the prison by the Marin Water Company, whose main source of supply is Lake Lagunitas. The price paid to this company for the water they furnish is 30 cents for 1,000 gallons. The total cost for the supply for the prison for all purposes during the year ending June 30, 1898, was $6,650 10.

It is doubtful if a sufficient supply of water could be obtained on the prison grounds from a system of wells. All the surface wells dug or bored on the prison lands so far furnished water of an inferior quality, and, besides, ran dry during the summer, and the only attempt at obtaining a flow of artesian water, made a number of years ago, proved a complete failure.

LIGHTING.

For the purpose of lighting, ten electric arc lamps are distributed over the prison grounds; and the interior of the various buildings, except the cells, are furnished with gas. Both electric light and gas are supplied by the San Rafael Gas and Electric Light Company. The cost of same during the fiscal year ending June 30, 1898, was, for gas, $3,202 01; for electric lights, $2,100.

The only mode of lighting the cells is by means of coal-oil lamps.

In the matter of lights a great improvement could be made at this prison if the State had its own electric light or gas plant, or both. The cost of such a plant, meeting all requirements, including the lighting of cells, would be from $6,000 to $10,000.

LAUNDRY.

The laundry is provided with one washing machine and one rotary wringer, both driven by steam, and a steam drying closet. The ironing is all done by hand. The efficiency of this department could be improved by additional machinery, at a cost of $1,200.

SEWERAGE.

The sewerage of the prison is provided for by brick and ironstone pipe sewers leading from the various buildings into one large main brick sewer, which empties into the bay. The only improvement which could be made on the system would be the extension of the main sewer from its present mouth into the bay for a distance of 150 to 200 feet, to deeper water, when the tides would carry off the sewage more effectually. The cost of such an extension would be $1,000 to $1,200.

The waterclosets for the use of the prisoners are open closets, consisting of large vats built of brick and cemented on the inside, and covered with a wooden platform containing the seats. The bottom of the vat is built on a slight incline in V shape, and a heavy trap door at the lower end closes the ironstone pipe connection with the sewer. These vats are filled with salt water, and are thoroughly flushed and cleaned at least once a day, or oftener, if necessary. The system gives perfect satisfaction. All the buildings containing the offices, the hospital, and quarters for officers and guards are provided with regular trap closets, porcelain bowls, etc.

BATHING.

For bathing purposes there is a large open tank, built of brick and cemented on the inside. This is kept full of salt water, and may be used by the prisoners at any time.

POWER.

Power for all purposes is supplied by the engines of the jute mills, and these are large enough for our requirements.

CAPACITY.

The capacity of the prison is sufficient for about 1,478 inmates.

PRISONERS.

Number of prisoners at present, 1,336; number on parole on June 30, 1898, 22.

Total number paroled since the parole law went into effect, in 1893, to June 30, 1898, is 55.

The nativity of prisoners confined in this institution is as follows:

	California.	Other States.	Foreign.	Total.
June 30, 1897	360	546	452	1,358
June 30, 1898	378	564	408	1,350

Only one convict succeeded in making his escape from this prison since April 1, 1891.

Discharges were as follows:

Year Ending—	On hand at Beginning of Year.	Received During the Year.	Total.	Discharged During the Year.	Percentage of Discharges.
June 30, 1897	1,300	542	1,842	484	26.28
June 30, 1898	1,358	473	1,831	481	26.27

Cost of maintenance, based on all expenses incurred, except operation of jute mill:

For year ending June 30, 1897	$162,810 49
For year ending June 30, 1898	172,365 83

Cost of maintenance, based on the above, plus five per cent interest on cost of plant (about $650,000):

For year ending June 30, 1897	$195,310 49
For year ending June 30, 1898	204,865 83

The annual and per diem cost of maintenance of the prisoners at this institution is as follows:

For Year Ending—	Gross.		Net (deducting earnings).	
	Annual.	Per Capita Per Diem.	Annual.	Per Capita Per Diem.
June 30, 1897	$162,810 49	34 cents	$121,418 55	25 cents
June 30, 1898	172,365 83	36 cents	145,204 31	30 cents

ACCOUNTS.

Accounts of receipts and expenditures are kept by the Clerk of the prison, as required by law (Section 9 of "An Act to regulate and govern the State Prisons of California," approved March 19, 1889).

A report of all moneys received is sent to the State Controller at least once every month, and all such moneys are paid by the Warden into the State Treasury, excepting so much thereof as may be necessary to pay the expenses and money allowed to prisoners upon their discharge and other minor expenses, such as postage, etc. Vouchers are required for all money so expended, and are on file at the Clerk's office. Bills for all supplies furnished must be approved by the Warden, and then approved and audited by the State Board of Prison Directors. After such approval they are sent to the State Board of Examiners, who also examine and audit them, and, if found correct, order their payment by the State Treasurer. A detailed statement of all moneys received and expended is forwarded to the State Controller at the end of each quarter, the correctness of such statement being also certified to by an expert appointed by the State Board of Prison Directors to examine the books and financial accounts of the prison every three months.

REQUISITIONS.

Requisitions for supplies needed are made upon the Warden by the officer in charge of the department requiring such supplies, and, if approved by the Warden, are entered upon a requisition book, which

is then sent to the Commissary, who makes the issue according to such entry.

INVENTORIES.

Inventories are taken at the end of each fiscal year, and are filed in the Clerk's office. A copy is also sent to the State Board of Examiners, as required by the law passed by the last Legislature.

SUPPLIES.

The percentage of contract and non-contract goods purchased through the commissary department during the past two fiscal years was as follows:

	Contract.	Non-Contract.
Year ending June 30, 1897	94.49%	5.51%
Year ending June 30, 1898	90.94	9.06

No data are accessible for previous years without going into an exhaustive examination of all the bills on file.

All contract goods are delivered at the prison wharf.

Bids to furnish supplies to this prison are advertised for as required by law (Section 14, Chapter CCLXIV, Statutes of 1889), notice of the time, place, and conditions of the letting of the contracts being given, for two consecutive weeks, in two newspapers published in San Francisco, one newspaper published in Sacramento, and one published in Marin County.

Printed schedules of the articles required are forwarded to all intending bidders upon application. These schedules are arranged in classes for the convenience of the bidders, such as groceries, coal, dry goods, hardware, drugs, paints and oils, etc., and every article known or likely to be required during the year, as far as it is possible to foresee such requirements, is embodied in these schedules. Ninety per cent of all the supplies required at this prison are purchased under contract.

Contracts are awarded once each year, bids being opened, as a rule, on the second Saturday in June.

CLINICAL RECORDS.

Clinical records of all sickness, deaths, and medical treatment of prisoners are kept by the resident physician.

OFFICERS AND EMPLOYÉS.

The payroll of officers, guards, and employés has remained about the same, and was as follows:

For the Year Ending—	Officers and Guards.	Jute Mill Employés.
June 30, 1891	$69,486 94	$11,963 71
June 30, 1892	62,260 53	8,152 56
June 30, 1893	61,776 32	8,066 67
June 30, 1894	59,392 32	19,520 73
June 30, 1895	59,162 18	19,416 79
June 30, 1896	57,776 34	19,826 39
June 30, 1897	59,034 15	21,053 22
June 30, 1898	60,493 54	24,099 33

The increase in the payroll of jute mill employés in 1894 was due to the enlargement of the jute mill, necessitating the employment of a larger number of foremen; and the increase in 1897 and 1898 was caused by the employment of a larger police force.

The total amount of salaries of the officers and employés of the prison is $86,380 00.

Guards and policemen are also furnished board and lodging.

JUTE MILLS.

No articles can be manufactured for sale except jute fabrics, and more than one half of the prisoners confined here are employed at this industry.

The total value of the jute mills, including factory buildings, warehouses, machinery, engines, and all necessary tools, as per Clerk's books, is $448,828 75. The plant as it stands is large enough to give employment to all the prisoners available, and its efficiency could not be improved by any additions or increase in machinery.

The value of all stock on hand on June 30, 1898, was:

Raw jute	$78,687 28
Jute in process of manufacture	2,927 47
Sundry supplies, consisting of oils, sizing materials, engine supplies, material for repairs, etc.	5,628 31
Manufactured goods, at cost price	93,686 64
Total	$180,929 70

MANUFACTURES.

This institution also manufactures for its own use all the shoes and clothing required by the prisoners, and tinware for general use. The material for these articles, such as leather, prison cassimere and flannel, tin, etc., is purchased the same as other supplies, by contract.

Similar articles could be made and furnished to other institutions; however, to do so it would be necessary to increase our facilities for making them.

Under existing conditions, all that could be done is to make up the goods, which would have either to be purchased or furnished by the other institutions, into finished articles, and it is doubtful if any saving could be made to the State by such an arrangement, as with the modern appliances and machinery now used by manufacturers, finished clothing, etc., can be purchased about as cheaply as the materials they are made of.

FURNITURE.

All cells are provided with wooden or iron bunks, wooden stools, small tables, washbasin, water-buckets, tin drinking-cups, and slop-buckets.

Officers' and guards' quarters are furnished with regular bedroom furniture—stands, bureaus, washstands, tables, and chairs, nearly all of which furniture was manufactured at the prison before the furniture factory was closed.

Officers occupying State houses furnish their own furniture. The State furnishes only the Warden's residence.

The prisoners' dining-room is furnished with long wooden tables and bench seats, each table accommodating twenty-two prisoners. The

table furniture consists of deep tin dishes, and common knives, forks, and spoons. The prisoners' kitchen is furnished with bake ovens, two ranges, roasting ovens, vegetable and stock boilers, hot-water tank, large copper coffee and tea urns, wooden sinks, etc.

The officers' and guards' dining-rooms are furnished with tables and chairs, crockery, and a fair quality of knives, forks, and spoons.

The kitchen contains one large double steel range, hot-water tanks, sinks, and all necessary cooking utensils.

All food for the prisoners is cooked by steam, and served to them hot from the kitchen.

LIBRARY.

The library of the prison contains about 4,000 volumes. It was acquired and is kept up principally by donations. The library is in charge of the resident chaplain, who has two prisoner assistants who act as librarians.

RELIGIOUS SERVICES.

Religious services are held every Sabbath, and are not confined to any one denomination. Catholic services are offered every alternate Sabbath, and Protestant services on every Sunday. Quite a number of prisoners, upon their discharge, are sent to religious organizations, such as the Salvation Army and Volunteers of America, for aid to obtain work and temporary shelter.

PUNISHMENTS.

The only punishments practiced at this prison are confinement in the dungeon or solitary cells, and loss of time credits.

Solitary or dungeon confinement is ordered by the Warden, or his deputy. The credits can only be taken away by the Board of Directors.

Records of all punishments are kept in the office of the Captain of the Yard.

FUNDS.

There is no contingent fund, other than for the payment of allowances and transportation to discharged prisoners, postage and similar items. All moneys received, excepting so much as may be needed for the purposes above mentioned, are paid into the State Treasury, and all bills for supplies are paid by said Treasurer, after their approval by the State Board of Prison Directors, State Board of Examiners, and Controller.

BOOKKEEPING.

The present management considers the system of bookkeeping at this prison as thorough and complete. The system of making requisitions for supplies and keeping account of them, after purchase and issue, is a thorough check on the issuing, as well as on the consuming department.

In connection with this subject, your committee has received a communication under date, October 20, 1898, from Warden W. E. Hale, in which he treats the matter of systems of bookkeeping in a thorough and masterful manner, and expresses the opinion that a uniform system would prove efficient in other State institutions. To which letter, now on file, reference is made.

PER CAPITA COST PER ANNUM.

Fiscal Year Ending June 30th.

For—	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Salaries	$52 89	$50 86	$50 77	$45 51	$46 28	$45 15	$44 39	$45 31
Food for inmates (prison mess)	48 69	46 18	40 50	37 47	32 96	31 16	31 76	33 48
Food for employés (officers' and guards' mess, and Warden's house subsistence)	15 02	9 60	10 21	8 06	7 37	6 97	7 85	10 75
Medicines	1 65	2 27	2 61	3 04	2 92	4 10	4 52	4 94
Clothing, shoes, and bedding (expenses of turnkey's and captain of yard's department)	30 66	23 03	18 74	20 33	15 72	15 90	14 38	14 73
Furniture, etc. (including general repairs)	5 79	4 18	2 10	2 05	2 24	2 87	2 41	3 18
Light	5 37	3 12	3 85	3 72	3 87	3 76	3 69	3 97
Water	7 47	6 82	5 28	4 18	4 28	4 08	4 56	4 42
Farm, garden, and stable	92	1 25	2 40	75	1 05		1 92	68
Telegraph, telephone, express, postage, etc. (general expense)	1 41	1 10	1 25	1 28	1 05	1 06	1 07	1 44
Allowance and transportation to discharged prisoners	3 69	3 41	3 22	2 87	2 97	2 75	2 68	2 57
Directors' expenses	1 71	1 35	3 75	2 13	2 44	2 02	1 69	2 72
Sundries	6 66	5 23	2 75	85	1 30	54	1 53	72
Totals	$181 93	$158 40	$147 43	$132 24	$124 43	$120 36	$122 45	$129 11

STATE PRISON AT FOLSOM.

LOCATION.

The State Prison at Folsom is situated in Sacramento County, about 2 miles from the town of Folsom, which is located on the Sacramento and Placerville Railroad.

In 1858, the Legislature authorized the Board of Prison Directors to select a site for a branch prison. Ten years passed without anything being done under the provisions of that Act. The Legislature of 1868 again took up the matter, and directed the Board of Directors to select a site before July 1, 1868, limiting the selection to two sites, *i. e.*, Rocklin and Folsom.

The Board of Prison Directors, on the 30th day of June, 1868, decided to locate the branch prison on its present site, and on that day obtained from the Natoma Water and Mining Company a deed for 350 acres of land, supposed to cover all the quarries necessary for prison purposes, and also the right to the first five feet fall of the canal. The consideration in this deed was that the State should pay $15,000, in convict labor, to be used on said canal (upon which work had been started by the Natoma Company), and the dam necessary for the same, at the rate of 50 cents a day for each convict capable of such work, to be paid for at the completion of said work; that is to say, the consideration from the State to the Natoma Company, *i. e.*, the convict labor aforesaid, was

to be delivered to the company as soon after the completion of the prison as was practicable.

Six years passed, and still nothing had been done. In 1874, the Legislature passed another Act, authorizing the construction of the prison, and appropriating $175,000 for that purpose. Upon the proper surveys being made, it was discovered that the 350 acres secured to the State by the deed of June 30, 1868, did not cover all the lands desired by the State, and, in fact, did not cover the lands upon which the present prison is located. The Board of Directors then secured another deed from the Natoma Company for 133.92 acres of land, the consideration being the same as in the first deed, viz.: $15,000, payable in convict labor at 50 cents a day for each convict, under the same conditions as the former deed. The beginning of the work, in the fall of 1874, was followed by the failure of the contractor, Miles, causing a cessation of work for a period of three years. Another appropriation was made by the Legislature in 1878, under which the prison was completed and occupied in July, 1880.

BOARD OF PRISON DIRECTORS.

The State Board of Prison Directors is composed of five Directors, each Director being appointed for a term of ten years. The present Board consists of the following Directors:

Daniel E. Hayes, of San Francisco; term expires, January, 1900.
Robert T. Devlin, of Sacramento, term expires, January, 1902.
Robert M. Fitzgerald, of Oakland; term expires, January, 1904.
James M. Wilkins, of San Rafael; term expires, January, 1906.
Don Ray, of Galt; term expires, January, 1908.

Directors do not receive a per diem or mileage; they are allowed all expenses incurred in the performance of their official duties.

There are two secretaries (or clerks, as they are designated by the statute), one for each prison, viz.: Joseph V. Ellis, for San Quentin Prison, salary, $150 per month; Brainard F. Smith, for Folsom Prison, salary, $150 per month.

By statute, clerks are boarded and lodged at the expense of the State, or paid a reasonable allowance in lieu thereof.

As prescribed by law, the Wardens of the separate State Prisons are treasurers of their respective prisons; the Board of Directors giving powers of attorney to each Warden, whereby are paid to the Wardens all State warrants and moneys from the State Treasury payable to the orders of the Board.

The Board of Directors meet at least once each month at each State Prison, or oftener, if necessary, and hold called meetings wherever it is most convenient, as they may decide.

ACREAGE.

The total acreage owned by the State is 483.92 acres, of which about 40 acres are utilized for buildings and grounds, 15 acres for garden and vegetables, 208 acres for pasturage and dairy, 200 acres for farming, and 20 acres for orchard. The 208 acres used for pasturage and dairy is of little value, and cannot be utilized for any other purpose. About 75 acres are irrigated, and about 100 more could be with but little additional cost. Nothing is paid for irrigation, as the water is pumped from

the American River into a large reservoir, from which it is drawn for domestic and irrigation purposes. The power used for pumping the water is water power, and its cost is simply limited to small repairs, oils, and other trifling items, of which no segregated account is kept.

BUILDINGS.

The buildings and prison improvements have cost to date the sum of $655,559 06. The buildings completed are the main administration, the cell building, convict dining-room and kitchen, officers and guards' dining-room and kitchen and sleeping apartments, the power-house building, and armory, all of granite; also three barns, numerous dwelling-houses for the occupancy of officers and guards, shops, and other small detached buildings, built of wood.

A chapel and armory guard post, to be built of granite and to be paid out of the earnings of the prison, are in course of construction. No other buildings, based on existing appropriations, are contemplated.

The main administration building is connected with the cell building, and the cell building with the prisoners' dining-room and kitchen, all being extensions of one building. The officers and guards' dining-room, kitchen, and sleeping apartment building are connected to the extreme end of this building. There is no access to it from the interior of the prison. The power-house building is detached from the main prison building and is situated upon the banks of the American River about four hundred feet in a direct line from the main administration building. The various shops are in the prison yard, within a reasonable distance from the cell building. The dwelling-houses are situated outside the guard line, some distance from the prison building proper. The system of the buildings is eminently satisfactory to the requirements, and in good condition as to utility. The connections cannot be improved under the present circumstances.

A transfer of inmates from other institutions to this would necessitate additional buildings, as present conditions and facilities do not permit of further additions to the population.

VENTILATION.

The cells are ventilated by ventilator pipes, running from the cells to the top roof, and by open holes in the iron doors. Very good effects are obtained by this system, which is as good a method of ventilation as can reasonably be expected, under present conditions. Possibly it could be improved, but to do so would demand very material alterations in both the cells and buildings, which could only be obtained at a considerable expenditure of money. No change has been contemplated, and, therefore, no estimate of cost made.

FUEL.

Coal, wood, and water power are used for generating heat and electric light. The electric light and power system is efficient in the highest degree. About 310 tons of coal per annum are used, at a cost of $2,917 56, and about 556 cords of wood, of the value of $2,058 84, per annum, for power, heating, and cooking purposes in this penitentiary. The future conditions, as to the supply of coal, wood, and water, for power, heating, and electric light purposes, are ample for our present

population. No change from the present system is advised. The cost per annum for lighting the prison is $1,224 11, on an average, since July 1, 1894, about the time the electric light was first used, and not including the salary of the electrician. The sum of $5,722 18 per year has been expended for fuel, for power, heating, cooking, and other purposes, including fuel for locomotive, taking an average from July 1, 1894, or $15 67 per day.

HEATING.

The cells of this prison are not heated. The dining-room and the sleeping apartments in the officers and guards' building are heated by steam. The main administration building is heated by open fireplaces, coal and wood being used for fuel. The system is good so far as it goes, and its present condition is above fault-finding. The method of heating could be improved by the introduction of an elaborate system of either steam or hot-air heating, but this would require a large expenditure of money, not suitable under the circumstances, and, as such is not contemplated, the cost has not been estimated.

WATER.

The water system of the prison consists of water pumped from the American River into the large reservoir situated upon an elevation sufficient to give good pressure, and thence it is distributed by pipes throughout the prison grounds and buildings.

The water is pumped into the reservoir by power derived from one of the six "Leffel" wheels in the power-house referred to before. The water system of this institution will approximate in cost to about $20,000, and is in very good condition at the present time. It cannot be improved under existing circumstances. No improvements have been contemplated, and, therefore, no estimate of cost made.

LIGHTING.

This institution is lighted entirely by electricity, the interior of the prison and buildings by incandescent lights, and the exterior by arc lights. The power for generating electricity is obtained from a "Leffel" waterwheel, located in the power-house upon the American River. The lighting system is as good as in any institution of the State. The cost of the electric light plant is $7,698 31.

The cost of lighting the prison from July 1, 1894, to July 1, 1898, including the salary of an electrical engineer at $1,200 per year, has been as follows:

For the year ending June 30, 1895	$2,177 89
For the year ending June 30, 1896	2,411 99
For the year ending June 30, 1897	2,627 32
For the year ending June 30, 1898	2,479 25

The present condition is first class. It could not be improved, and, if the present population should be increased, it would be only necessary to make additions. No such additions having been contemplated, no estimate of cost of improvements has been made.

LAUNDRY.

The laundry is far from perfect. All laundrying is done by hand, both washing and ironing, and the plant is decidedly old-fashioned and crude. Its present condition could be very materially improved, and the improvement needed is a complete modern laundry outfit at the expense of some $4,000 or $5,000.

SEWERAGE.

In the main administration building, and in the officers' and guards' apartments, where single waterclosets are in service, patent flush closets of the latest design are used. In the main prison building there is one large closet for prisoners' use, where all excrement is precipitated into a large tank containing fresh water, and this tank is flooded and flushed out clean twice a day. All sewage passes into a system of vitrified iron pipes, through which it is carried outside the prison grounds and deposited in the American River. Besides this, there is a large five-foot drain, extending from the river completely under the prison buildings, with an opening in the rear, into which runs all surface drainage from the outside, but none of the prison sewage is emptied into this drain. The system is a perfect one for a large institution of this kind. There is no sewer gas, all the closets being kept clean, sweet, and healthy.

The cost of this sewerage system has been comparatively small, as all plumbing, pipe-laying, and in fact most of the work has been done by the convicts, the only materials purchased being cement, the vitrified pipe-line, the flush appliances in the convict watercloset, and the patent closets in the main administration building, etc. No account of the cost of the sewerage system has been kept; it has simply grown as the prison has grown, into its present perfect condition. An improvement, however, might be made by the addition of a system for the better disposal of the sewage than by dumping it into the American River. To accomplish this, it would be necessary to add a large pumping plant with aërating or other purifying reservoirs upon some elevation at a distance from the prison buildings, into which to pump the liquid sewage. To arrange for the disposal of the sewage in any other manner than by dumping it into the river would cost at least $15,000. The system of waterclosets is the flush system and works admirably.

BATHING.

The prisoners of this institution are bathed entirely by the shower-bath system. They are obliged to take a bath at least once a week. There is a large bath-house with cement floors, filled with shower baths, supplying both hot and cold water, into which the men are taken and given shower baths. This system is more perfect than bathtubs or bathtanks. The cost has been trifling, as the hot water from the laundry department and kitchen has been utilized, and the only expense has been for the iron pipes and the cement, all the labor having been done by the convicts themselves. The present condition is excellent. No improvement is needed and, therefore, no additions thereto have been considered.

POWER.

The power used is both water and steam—steam only to a limited degree and when water is lacking for power purposes. There is a large power-house containing six turbine wheels, which develop about 1,000 horse-power. The power is applied in the power-house to the electric light plant, the air compressor, the pumping plant and the ice machine, all of which are located inside the building. From the compressor pipes extend to the different parts of the prison grounds, where are located the rock-crushing plant, derricks, drills, and donkey engines, which are run by compressed air from the compressor. The system is good and ample for all the wants of the prison.

The power-house and the machinery contained therein cost $181,220 75, and are in remarkably good condition at the present time.

To run the rock-crushing plant, steam is used during a few months in the year, when the water is too low in the American River to furnish sufficient power for its operation, but during the greater portion of the year, the rock-crushing plant is run by compressed air carried in pipes from the compressor in the power-house. The present method of generating power could not be improved; nc estimate, therefore, of the cost of any improvements has been made.

CAPACITY.

The capacity of the prison at the present time is about 1,000. The population on October 1, 1898, was 906 prisoners, all male, no females being incarcerated in this penitentiary. There are no other buildings that could be utilized. Any addition to the population, over and above 1,000, would necessitate the building of new cells and other structures.

On June 30, 1898, there were nine prisoners out on parole. There have been 22 prisoners paroled since November, 1893, to the present time (October 1, 1898), an average of $4\frac{2}{5}$ per annum.

On the 30th of June, 1898, the prison population was 928; of this number, 297 were natives of California, 337 of other States, and 294 of foreign birth.

The number of escapes from Folsom Prison by fiscal year, beginning with 1890, are as follows:

1890	3	1895	3
1891	5	1896	2
1892	2	1897	0
1893	2	1898	2
1894	0		

A total of 19 in eight years, of which all but three have been recaptured.

The percentage of citizens of other States and countries cannot be had.

The cost of maintenance per annum, figured on the cost of food, clothing, furniture, attendance, and all operating expenses for the fiscal year ending June 30, 1898, is $118 83 per prisoner.

The cost of maintenance, figured on last item, plus all items and cost of plant, interest at 5 per cent on cost of plant, for the year ending June 30, 1898, is $122 44 per prisoner, the average attendance during this fiscal year having been 907.69.

PRIVATE CONTRIBUTIONS.

There have been in this prison no private contributions of money, clothes, or anything else.

MONEYS.

The moneys received at this prison are received through State appropriations and from the sale of manufactured and other articles. The statement of these receipts is kept in a cash book, as are also the accounts of all expenditures.

Once every three months the books are experted by an accountant appointed by the Board.

Requisitions for purchases are made upon the Warden by the different departments, and by him either approved or rejected. If approved, the requisitions are turned over to the Commissary, the purchasing agent of the institution, and the purchases made by him, after each order has been presented to the Warden and signed. The Commissary is obliged to keep on file, and be able to show a requisition, signed by the Warden, for every article purchased by him for the use of this institution.

Inventories are taken on July 1st of each fiscal year, and kept on file in the office of the Clerk of the Prison.

All contract goods are purchased to be delivered at the prison and non-contract goods are purchased f. o. b. cars where purchased. The amount of contract and non-contract goods purchased for each fiscal year beginning with the period commencing June 30, 1890, and ending June 30, 1898, is as follows:

	Contract.		Non-Contract.	
	Value.	Per Cent.	Value.	Per Cent.
1891	$64,665 98	90.54	$6,752 72	9.46
1892	61,882 19	90.00	6,878 01	10.00
1893	59,188 82	87.18	8,711 83	12.82
1894	51,394 90	85.225	8,909 54	14.775
1895	58,699 00	89.045	7,199 18	10.955
1896	55,191 67	87.35	7,990 77	12.65
1897	54,875 66	87.215	7,929 66	12,785
1898	59,090 42	88.02	8,041 91	11.98

No clothing is received for inmates, nor money paid in by them, nor on their account by relatives, friends, etc. The money belonging to prisoners is kept in a set of books, called the prisoners' cash books.

CLINICAL RECORDS.

Clinical records of all hospital cases and of all deaths are kept in a record book by the physician and druggist in charge of the hospital department of this prison.

EMPLOYÉS.

The percentage of increase or decrease of employés, compared with the number of prisoners, is very small. In 1890 the average number of prisoners was 623, with the number of guards at 40. In 1889 the

average number of prisoners was 907.7 and the number of guards 46. In 1890 there were 14 officers connected with this institution, and in 1898 there were 18. There have been added since 1890 the offices of druggist, assistant turnkey, electrician, locomotive engineer, and farmer, the office of Warden's secretary having been eliminated from the list during that period.

The salaries of the guards have not been increased during the last ten years, remaining at $50 a month, with board and lodging. There has been only one increased salary among the officers since 1890, the salary of the gatekeeper being raised from $75 to $85 a month; while a corresponding decrease was made in the salary of the ambulance driver, so that the payroll was neither diminished nor increased.

PRODUCE.

Enough milk is produced to supply the prison, the institution having a dairy of about twenty cows. Condensed milk is used when the supply of fresh milk fails.

The prison produces hay, vegetables of various kinds, fruits, grapes, pork, bacon, and ham sufficient for the uses of the prison, except in exceptional cases.

It manufactures ice, tinware, boots, shoes, clothing and underclothing, beds and bedding (excepting blankets) for the prisoners, and does all the carpentering, blacksmithing, and building, the only articles manufactured for sale being crushed rock for roadmaking purposes and granite curbing, crosswalks, etc.

Prisoners are employed upon the rock-crushing plant, in the quarry, in the prison shops, on the ranch, in the gardens, and in all the duties of an institution of this character.

Guards and officers constitute the only labor necessarily employed to superintend the convicts and direct them in their employments. The departments are operated entirely by convict labor under the supervision and management of officers and employès.

Under present circumstances this prison cannot produce for sale or delivery to other institutions any supplies worth mentioning.

The stock on hand and equipment are excellent, so far as the rock-crusher plant is concerned, and in all other prison departments is sufficient for prison uses.

FURNITURE.

The room and table furniture in corridors, cells, officers' quarters, dormitories, and kitchen is of a plain, substantial character, and much of it was made in one of the two State Prisons.

FOOD.

The food is cooked by steam and served by convicts. There is one large dining-room for prisoners, one dining-room for the officers, and one for the guards, the officers' and guards' food being cooked in the same kitchen.

The warden has his separate dining-room, kitchen, and supplies. His food is cooked as in an ordinary family, and served by convict waiters in his private dining-room.

On an average 64 officers and guards take their meals, at an average cost of $10 44 per man per month for meals.

During 1898, with an average population of 907.7, it cost $2 50 per month or 8¼ cents per day to feed each person three meals.

LIBRARY.

The library contains about 1,500 volumes, the result principally of donations, a limited number only having been purchased.

RELIGIOUS SERVICES.

The religious services consist of instructions by a Protestant minister and by a priest of the Catholic Church, the two denominations giving alternate services during the month.

PUNISHMENTS.

Punishment consists of loss of credits by order of the State Board of Prison Directors after the delinquent has been brought before the Board in open session, tried by it for the offense charged, and found guilty. This form of punishment is prescribed by law, and applies to the graver infractions of prison rules and regulations. Prisoners are also punished by confinement in solitary cells; and in aggravated cases, when solitary confinement does not act as a deterrent, prisoners are triced up by the hands. Punishments are also inflicted by deprivation of the privilege of writing or receiving letters, as well as of the use of tobacco. The punishments are all administered by order of the Warden. A record of the punishments is kept in one of the offices of the prison.

EDUCATIONAL ADVANTAGES.

The educational advantages offered are very limited. In all cases where a prisoner desires to improve himself mentally, encouragement is offered by the prison management by supplying school books to a reasonable extent. There are no regular classes, however, and no regular teachers, the more intelligent convicts acting as teachers of the illiterate. There seems to be a marked desire on the part of many prisoners for mental improvement, and the results shown, with the limited opportunities heretofore existing, are very satisfactory. A larger library, with better facilities for teaching illiterate convicts, is a great desideratum, and should receive the consideration of the Legislature.

Inmate labor is employed in the clerical and administrative departments as largely as possible. About the entire clerical work is done by prisoners under the supervision of the heads of departments, no bookkeepers, stenographers, typewriters, photographers, draughtsmen, or other clerical help being employed.

FURNISHING SUPPLIES.

Advertisements are inserted for at least two consecutive weeks in two newspapers, printed and published in the City and County of San Francisco, and in one newspaper printed and published in the City of Sacramento, and in one newspaper printed and published in Marin County. All contractors are obliged to enter into a contract and to

furnish a penal bond with good and sufficient surety, in amount equal to 50 per cent of the aggregate total of the contract awarded.

COST OF MAINTENANCE.

The annual cost of maintenance of employés and officers of Folsom Prison for the year ending June 30, 1898, is, salaries and mess, $58,805 52. The cost per diem of maintenance of same is $161 11.

The annual cost of maintenance of prisoners during the year ending June 30, 1898, is $107,862 46. The per diem cost of maintenance is $295 51.

CONTINGENT FUND.

This prison has no contingent fund. The law prescribes that all moneys received or collected by the Warden shall be paid by him into the State Treasury to the credit of a fund to be known as the "State Prison Fund," at least as often as once a month, except so much thereof as may be necessary to defray the expenses and money allowed to discharged prisoners, the current expenses of maintaining and operating the prison, and the expenses of officers and employés. The Warden must have vouchers for all moneys expended and keep the same on file in his office at the prison.

PER CAPITA COST.

The per capita cost per annum for each fiscal year from 1890 to 1898, is as follows:

Average.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.
Number of prisoners	678.7	695.0	709.0	689.5	791.6	890.0	900.7	907.7
Salaries	$62 92	$59 85	$62 04	$67 19	$59 53	$55 56	$54 91	$54 49
Food of inmates	39 81	34 92	30 91	30 44	27 81	27 97	26 83	30 03
Food of employés	14 55	13 01	12 68	15 11	11 73	10 24	9 47	10 07
Medicines	2 93	2 66	2 41	2 63	2 39	2 99	2 85	1 96
Clothing and wearing apparel	16 23	13 71	16 32	14 02	14 65	10 94	10 82	11 10
Fuel	7 45	7 55	6 24	5 17	4 16	6 81	6 79	8 17
Light	4 33	4 33	4 31	3 62	2 75	2 71	2 91	2 73
Farm and garden	2 38	2 02	2 96	1 19	3 56	2 05	2 09	2 87
Stationery	45	45	54	49	51	48	48	46
Telegraph and telephone	69	57	71	85	61	37	48	56
Sundries	22 13	19 48	20 23	18 09	15 15	6 79	7 67	5 43
	$173 87	$158 55	$159 35	$158 72	$142 85	$126 91	$125 30	$127 87

PRESTON SCHOOL OF INDUSTRY.

LOCATION.

The Preston School of Industry is located at about a mile from Ione, Amador County, which is the terminus of the Amador branch of the Southern Pacific Railroad that connects with the main line at Galt, Sacramento County, California.

The date of the location of the school was fixed by an Act entitled "An Act to establish a school of industry, to provide for the maintenance

and management of the same, and to make appropriation therefor," approved March 11, 1889.

The general supervision and management of the school was vested in the State Board of Prison Directors, and they entered upon the discharge of their duties as such in March, 1889. In December of the same year, after considering various sites, they purchased a tract of land of about 300 acres, located north of Ione, for which $6,900 was paid.

The cornerstone of the administration building was laid December 22, 1890, and the work of construction proceeded until November, 1891, when the appropriation was exhausted and the work discontinued. The Legislature of 1893 appropriated sufficient means to complete the building and to purchase furniture, supplies, etc.

By an Act of the Legislature, in 1893, the Board of State Prison Directors were succeeded by the Board of Trustees of the Preston School of Industry, under whose management the affairs of the school have continued.

In March, 1898, 240 acres of land adjoining the school and located on either side of the Sacramento road was purchased for $5,000.

BOARD OF TRUSTEES.

The Board of Trustees consists of three members, as follows:

E. M. Preston, of Nevada City; date of appointment, July, 1897.

L. J. Maddux, of Modesto; date of appointment, July, 1895.

F. D. Tyrrell, of Sacramento; date of appointment, April, 1897.

These receive no mileage nor per diem, but are paid expenses incurred in the discharge of their official duties. The Secretary is B. T. K. Preston, whose residence is at the school, and whose salary is $100 a month.

There is no treasurer. Warrants for support are drawn in favor of the Trustees. The California State Bank is the depository of the funds. Payments are made by order of the Board. Checks are drawn by the Secretary and are signed by the Superintendent.

The Secretary is treasurer of the contingent fund, payments from which are made on the order of the Board of Trustees. The Secretary is also treasurer of the cadets' cash, which consists of money belonging to the inmates.

The business of the school requires monthly meetings, which are generally held on the first Saturday of each month. Special meetings are called by the President when deemed necessary.

For the year ending June 30, 1898, the amounts paid to Trustees for actual expenses were as follows:

Hon. E. M. Preston	$220 00
Hon. L. J. Maddux	203 20
F. D. Tyrrell, M.D.	133 70

ACREAGE.

There are 570 acres of land belonging to the school, which are utilized as follows:

Buildings and grounds	50 acres
Garden and vegetables	50 acres
Pasturage and dairy	300 acres
Farming	150 acres
Orchard	20 acres

Of the 300 acres for pasture, about 100 cannot be utilized for anything else. Much of the 300 acres could be brought under cultivation by means of the water-power and irrigating plant belonging to the school. About 250 acres can be irrigated, and much more land could be if additional pipes at comparatively little cost were laid. The cost of irrigating is the employment of labor only.

BUILDINGS.

The buildings, completed, cost as follows:

Administration building	$147,256 15
Trades building	26,137 34
Horse stable	3,795 00
Cow barn	3,597 00
Shelter building	687 44
Hothouse	77 27
Power-house and tunnel	5,597 41
Commissary building	2,275 63
Horticultural building	253 58
Blacksmith shop	361 30
Total	$190,038 13

The buildings in contemplation are an annex to the administration building and two double cottages. The annex is to be located west of the present annex to the administration building, and is to be used for the boys' kitchen, dining-room, and for the assembly room. The present dining-room is inadequate, and no previous provision was made for an assembly room for religious, literary, and other exercises. The boys' kitchen will be used for the officers' kitchen, and the boys' dining-room for sleeping apartments for the officers. The sleeping accommodations for the employés of the school are not now sufficient. Two proposed double cottages are to be located, one about 500 feet east, and one about 500 feet west of the administration building. The existing appropriation of $5,600, for annex and double cottages, was made at the last session of the Legislature.

The administration building and the annex, with the connecting brick hallway, are located on a commanding eminence overlooking the town of Ione. The trades building is situated at the foot of the hill, about 500 feet east of the administration building. The power-house is about 300 feet northeast of the trades building. The blacksmith shop is about 50 feet from the power-house. The stable, shelter building, and cow barn stand about 1,000 feet north of the administration building, and far enough apart to lessen the liability of fire catching from one to the other. The commissary building is about 75 feet east of the annex to the administration building.

The buildings in regard to utility are satisfactory, except that the segregated plan cannot be carried out under existing conditions, but the difficulty will shortly be overcome, when the proposed two double cottages are completed.

A transfer of a portion of the inmates to other institutions would not obviate the necessity of the proposed buildings, as the system of reformation absolutely requires that the segregate or family system be put into operation.

VENTILATION.

The system of ventilation in use is the Abrahamson patent, and is satisfactory and considered perfect. No improvements are suggested in this particular.

FUEL.

The fuel in use is principally oak wood, though some pine is used. Oak is used for generating the power for the laundry, and for heating and cooking purposes, and it appears to be efficient. The total annual cost is about $2,900; the daily cost about $8. This estimate is based upon the forty-eighth and forty-ninth fiscal years.

HEATING.

The building is heated by steam generated in the basement, and sent direct to radiators, with drain returns for condensation. The system is good and works admirably; the condition of piping and radiators is also good. The boiler, however, in which steam is generated, is worn out and altogether useless, and the flue is burnt out.

In view of the increased area for heating, when the annex to the administration building is completed, and also in view of the wornout condition of the heating apparatus, it will be necessary to place in position an improved boiler, the outside cost of which is estimated at $1,500.

WATER.

The school's water supply for domestic purposes is brought from a spring in a slate formation about a mile from the building, and runs to the power-house through a closed pipe. It was formerly transported to the building by means of a tank on wheels and drawn by horses. About October 1, 1898, a pumping plant was placed at the power-house, and the water is now pumped to the building.

The water supply is somewhat limited—is only enough for cooking, laundry, and drinking, and is not of a particularly good quality. The water used for washing, drainage, and sewerage purposes is obtained from the ditch.

The cost of the water system for domestic purposes is about $1,000. This is exclusive of the water right mentioned hereafter, which cost $64,339 51. An effort has been made to bore artesian wells in certain sections of the lands, but with poor success, on account of hard bedrock formation. It is the intention to again experiment in this direction. The building of a cistern to save the rain water is also contemplated.

Application for water rates has been made to the Blue Lakes Water Company, but no answer as yet has been received.

The cost of the contemplated improvements for the water supply would be nominal, as the necessary work will be performed by the inmates.

In case of fire the water supply is entirely adequate. Hose and reels are placed at reasonable distances from one another in corridors, dormitories, basements, etc., of the school, and other buildings are supplied with necessary hose attached to the water supply, which can be brought into instant use. Besides the above equipment, there is a reel containing about 250 feet of two-inch hose, which, together with the other facilities referred to, is considered sufficient for all purposes.

LIGHTING.

The buildings are lighted by electricity from two Westinghouse dynamos, 110 volts, by direct or straight current. The capacity of the dynamos is 1,200 16-candle-power incandescent lamps. There are also five arc lamps on the outside of the buildings.

The system is satisfactory; its present condition is good, and no improvements are necessary. Any improvements which the future may suggest can be made with the labor of the inmates. The cost of the plant was $3,700 39.

LAUNDRY.

The laundry is well equipped and in good condition, and consists of one Troy washer, one Troy mangle, one Troy wringer, one Troy drier, belting and steam connections, soap boiler, washing tubs, etc., and the cost to date is $2,084. The present condition is good, and no improvements are necessary, other than can be made by inmates and school employés with trifling cost.

SEWERAGE.

The sewage is run through regular clay sewage piping some half mile from the building into a ditch, which carries it off to its ultimate destination for irrigating purposes. The sewage pipe has a fall of about 100 feet. The present condition of sewerage, closets, etc., is good, and no improvements are necessary. Closets are the Syphonia washout, and seem to give good results, and emit no bad odors. The cost of the plant was $1,300.

BATHING.

The facilities for bathing for the inmates are fair, and consist of upright or shower bathroom, where the three companies take turns in bathing. They will be improved when the cottage system is completed. A room in the basement, now used by one of the companies, contains a large swimming-tank, which has not been in use for some time. When the company removes from this room to one of the cottages proposed, it will then be available for bathing purposes. The cost to be incurred in effecting this arrangement will be trifling, as the work will be performed by the inmates. The cost of the bathing plant is included in the cost of the administration building.

POWER.

In 1890 the Board of Trustees entered into an agreement for the purchase of water rights located along Sutter and Mule creeks, including rights of way, and site for storage reservoir. The system was perfected under the direction of competent engineers, and is capable of supplying all power necessary for the school, and affording ample facilities for irrigation on a large scale. The water head is about one mile from the town of Sutter Creek, and is conveyed by ditch, flume, and tunnel about four miles to the storage reservoir at "Henderson Place"; it is then conveyed by ditch, flume, and pipe to the head of pressure pipe about one mile in length. The preasure pipe is made of No. 10 wrought iron, riveted and dipped, and is 18 inches in diameter, with a 300-foot head, giving at power-house 130 pounds pressure to the square inch to two waterwheels, 48-inch and 36-inch, and to two water motors, 18-inch and 8-inch.

The section of the ditch near the head of Sutter Creek was improved by placing therein sand boxes, one 41-foot and two 36-foot, to prevent the deposit of sand in large quantities in the reservoir. This was a much-needed improvement, and has greatly improved the quality of the water. About 900 feet of 14-inch water-pipe has been put in to take the place of wornout pipe.

The system is considered nearly perfect, and is to be made entirely so by the labor of the inmates at the earliest opportunity.

The cost of water power (water right, ditches, flumes, reservoirs, engineering, etc.), is	$64,339 51
Waterwheels, connections, shafting, etc.	5,800 00
Total	$70,139 51

CAPACITY.

The capacity of the school at the present time is 250; with the erection of the proposed double cottages it will be increased to 450 or more. There are five wards or dormitories. Other portions of the buildings could be adapted to use for dormitories, without additional cost, by school labor.

INMATES.

The number of inmates on June 30, 1898, was 141; the number on parole June 30, 1898, was 54. The average number on parole per annum from 1894 to June 30, 1898, is 13½.

The number of inmates of the school who are natives of California is 102; natives of other States of the Union, 34; foreign-born or nativity unknown, 5.

The percentage of discharges from 1894 to June 30, 1898, was 2,919. The number of escapes from 1894 to June 30, 1898, was 303, and the number of returned escapes for same period was 272.

The cost of maintenance, figured on cost of food, clothing, furniture, and attendance and all operating expenses for cadets, was, per diem, 92.6 cents; per annum, $337 99. For officers, on same items, it was, per diem, $3 98; per annum, $1,452 70.

The cost of maintenance, based on salary and cost of food only, for officers, was, per diem, $2 23½; per annum, $816 02. Officers' maintenance, food only, per diem, 48 cents; per annum, $175 20.

Cost of plant July 1, 1897	$306,952 98	
Interest at 5 per cent	15,347 64	
		$322,300 64
Maintenance forty-ninth fiscal year		59,553 03
Total		$381,853 67
Per capita per annum		2,157 93

PRIVATE CONTRIBUTIONS.

Private contributions of money are received by the Superintendent and turned over to the Secretary, who gives his receipt therefor and keeps a full and complete account of same. Accounts are vised by the Superintendent. Money is drawn by cadets upon their order to captains of companies, and the order approved by the Superintendent.

Friends are not allowed to visit inmates during the first two months of their residence at school. Visits from friends and relations are

encouraged, but not oftener than at an interval of two months, and the length of a visit is limited to one day. Visitors are allowed to visit the school each day, with the exception of Sunday, from 8 A. M. to 4 P. M.

Permission is given to friends to send the boys gifts in the form of collars, handkerchiefs, neckties, and things of that character.

If money is paid by parents, friends, or guardians of the boys or inmates of the school, its care follows the course mentioned in the first subdivision of this question.

The pay for the care of inmates, which is fixed at $11 per month, is made by the court, and as so ordered is paid by the parent or guardian to the county, and by the county in turn to the State. If such order is not made upon guardian or parent, it is paid direct by the county to the State. In no event does any of the money so paid come into the hands of the officers of the school.

REQUISITIONS.

Requisitions are made by the heads of the different departments and signed by the Superintendent. They are then turned over to the Commissary, who furnishes the articles if on hand. Requisitions are made by Commissary on contractor or person of whom supplies are purchased. The requisitions, signed by the Superintendent, are checked and filed by commissary department.

Purchases are made locally, as well as of contractors in Sacramento, Stockton, and San Francisco, upon requisition as before stated.

INVENTORIES.

Inventories of the stock on the shelves are taken monthly by counting, weighing, etc., and then filed and preserved.

The control of the stock on hand is under the Commissary, and he cares for it in a safe and secure building erected for the purpose, and keeps the key of the building.

The percentage of contract goods for the fiscal year 1898 was 75 per cent; of non-contract goods, 25 per cent.

It is impossible to give the percentage for the years preceding 1898 without an exhaustive examination into each particular purchase; the aggregation is incorporated during the last fiscal year.

The accounts are experted annually by an expert engaged by the Board of Trustees.

All clothing is furnished to inmates by the school.

CLINICAL RECORDS.

The clinical records of the hospital have been kept in the following manner for the last year, and the system can be improved. When a patient is received, his name is entered on the record book, with the date and the diagnosis of the case. There is also a space in the book in which remarks in reference to the case may be made. The date of his discharge is likewise entered.

All prescriptions written are kept on file for reference. Where it is deemed necessary, daily temperature charts are kept of those sick. Daily reports are made and delivered to the Superintendent, giving the names of the boys in the hospital, date of admission, and diagnosis of case. The generality of cases have been so similar that a new pre-

scription has not been written for every one, as most of the fever cases have been of a mild type. Temperature charts are not used for such cases. A fuller record might be kept and would prove more satisfactory for reference, but the present plan is an improvement on that formerly used.

EMPLOYÉS.

The payroll of employés for the year 1898–99 amounts to $25,749 96.

There are no civil service rules in this institution. Employés are chosen for special fitness in their particular line: integrity, fitness, and special adaptability for reform being required.

Since January the last, there has been established an additional school-room, in view of the law stating that inmates should be given as much instruction as possible. A blacksmith and wheelwright's department has also been added.

Most of the employés of this school have been with it for some time. Since January, the date of appointment of the present Superintendent, there have been three removals, one on the ground of consolidation, one of the cooks of the officers' mess, on the ground of incompetency, and a change was made in the stockman, as the person in charge did not appear to be sufficiently qualified.

The accommodation for the officers in the building is not as complete as it might be, as seven of the officers have to sleep outside. This difficulty will, however, be overcome, when the cottage system is inaugurated.

Each officer has two weeks' vacation during the year, at the discretion of the Superintendent, and four half days off during the month. A record of employments and discharges of employés is kept in a book provided for that purpose.

PRODUCTIONS.

The milk produced during the fiscal year, 1897, was 128,772 pounds, of the value of $2,640 66; that during the year 1898, 148,215 pounds, of the value of $2,974 10. The amount of hay produced in 1897 was 75 tons; in 1898, 116 tons. The value of vegetables produced in 1897 was $504 50; in 1898, $1,344.

All the shoes and slippers used by the inmates are made in the school, as is also the clothing worn by them, and the citizens' clothes, given to discharged boys when they leave the school, shirts, undershirts and drawers. Without increasing the plant, the productive capacity of the school could be considerably increased, perhaps enough to supply 500 inmates.

Inmates are employed to do housework, as assistants in the hospital, in the officers' and boys' mess, in the carpenter shop, in the stock department, on the farm, in the horticultural department, engineering department, laundry, tailor shop, and shoe shop. More inmate labor could be utilized. The boys attend school one half-day, and work the other half, so that only one half the inmate labor is available at one time. Any number of boys could be kept busy, in view of this arrangement.

The institution produces, as before stated, for its own use, shoes, clothing, etc., vegetables in endless variety, farm products, hay, hogs, lard, chickens, eggs and milk. There could be produced for sale to other institutions clothing, shoes, and vegetables.

The industrial departments being worked simply to supply the present needs of the institution, no stock is carried on hand with the exception of the shoe shop, which carries probably 100 pairs of shoes.

FURNITURE.

The furniture is of a good substantial character, and inexpensive. Table furniture consists of good serviceable china, common iron knives and forks, and lead spoons. Table covers are of linen, of fair quality. The corridors are covered with matting in part, the outer edges of corridors being oiled and waxed, and are swept and cleaned daily.

There are six wooden cells, called meditation rooms, located in second story of commissary building, in which transgressors are at times confined.

Officers' quarters are furnished with serviceable oak furniture of an inexpensive kind, but the quarters are inadequate to accommodate all the officers of the school.

The dormitories are roomy and airy and are supplied with three-quarter iron bedsteads, with woven wire springs and good mattresses, covered with slip sheet, top sheet, blankets, and white damask coverlet.

The kitchen is equipped with two double ranges and with furniture of fair quality.

FOOD.

The food is cooked on ranges and in two patent steamers, having a capacity for 600 inmates.

The food supplied is of the usual variety and consists of pork, mutton, vegetables, rice, beans, macaroni, mush, tea, coffee, potatoes, etc., well cooked and served in ample quantities. A report is filed each day, showing the bill of fare.

LIBRARY.

The library consists of 450 volumes, and was acquired by contributions of books from individuals and by the proceeds of entertainments given by the inmates. At the commencement of the fiftieth fiscal year, a new and choice lot of books will be purchased out of the appropriation made by the last Legislature, comprising books suitable for juvenile readers. Many of the books in the library at present are not suited for the purposes intended.

The rules of the library provide that every book in the library should be properly numbered and labeled, and a catalogue showing the title and number of each book must be kept by the librarian, appointed by the Superintendent. The library is open to every boy and employé, for drawing and returning books, every evening between the hours of 6:30 and 7:30 o'clock, Sundays excepted, and the time limit for retaining a book is two weeks.

RELIGIOUS SERVICES.

Religious services are held in the chapel each Sunday, under the direction of the ministers of the various churches in the town of Ione. The services are conducted on broad lines, and are interspersed with solo, choir, and congregational singing.

The spiritual welfare of the Catholic boys is ministered to twice a month by a priest of that denomination.

PUNISHMENTS AND CORRECTIONS.

Punishments and corrections are administered for violations of the rules of the school and for bad conduct. Corporal punishment is only inflicted for a flagrant offense, and then in a modified form by an officer, other than the one reporting the offense, selected by the Superintendent, in the latter's presence and under his direction. Confinement in the meditation room is frequently resorted to and with good effect.

A complete and detailed record of punishment inflicted is kept in a book provided for that purpose.

EDUCATIONAL ADVANTAGES.

Three schools with competent teachers are provided. Two of the schools are not well adapted for the purpose, but this difficulty will be overcome when the cottage system is inaugurated, as then ample schoolroom facilities will be provided. The boys who come to the school are deficient in education, some of them being unable to read or write. They are taught to speak English correctly, to spell, read, and write, and are given instruction in mathematics and the courses provided in the grammar schools of the State.

Inmate labor is not employed in the clerical or administrative departments, except that one boy is an assistant in the commissary department.

ADVERTISING FOR SUPPLIES.

The Board of Trustees are required to contract for supplies for any period of time, not exceeding one year, and contracts are limited to bona fide dealers in the several classes of articles contracted for. Notice of the time and place and conditions of the letting of the contracts is given for at least two consecutive weeks in one newspaper published in the City and County of San Francisco, one in Sacramento County, and one in Amador County. The notices are published before the expiration of the fiscal year, and in long form, setting forth in general terms the various articles required. Bidders are supplied with printed schedules and forms of bids, and the Board segregates them, and makes awards upon each separate article.

CONTINGENT FUND.

The contingent fund of this institution is made up from sales of surplus stock, borrowed money, drayage, and freight collected on contract goods, work done in tailor or shoe shops for officers, sale of surplus water, etc., and is drawn upon to pay expenses that are not properly chargeable to the support fund. No permanent improvements are paid for out of this fund, but "improvements" constitute a department of expense against the support fund.

For the last four fiscal years the receipts and expenditures of this fund are as follows:

	Receipts.	Expenditures.
Forty-sixth year	$297 65	$135 40
Forty-seventh year	567 56	200 90
Forty-eighth year	487 00	367 24
Forty-ninth year	1,100 10	950 51
Total	$2,452 31	$1,654 05

ACCOUNTS AND BOOKKEEPING.

The accounts are kept in the usual double-entry system—journal, cash book, and ledger being used. A trial balance is taken monthly.

The present system of accounts and bookkeeping is well suited to the purpose, and has been pronounced by the expert and others capable of judging as entirely satisfactory. No improvement is suggested. The present system serves as a check on articles supplied to each department.

The committee would recommend a more detailed system than the one now in use.

PER CAPITA COST PER YEAR.

	46th Year.	47th Year.	48th Year.	49th Year.
Salaries	$188 33	$149 65	$115 34	$151 11
Food for cadets	48 54	41 97	40 15	63 51
Food for officers	45 52	28 10	25 18	38 69
Drugs and medicines	4 74	2 92	1 46	1 46
Stationery	10 85	1 46	1 46	3 28.5
Fuel	14 60	10 95	10 95	18 98
Furniture	18 20		1 46	
Farm and garden	52 30	25 16	12 77.5	19 71
Wearing apparel	39 32	16 69	13 87	16 42.5
Sundries	61 22	4 15	45 99	24 82
Total per capita per annum	$483 62	$281 05	$268 64	$337 99

Light and power are derived from the school's water power; no fuel is required. The expense is trifling.

WHITTIER STATE SCHOOL.

LOCATION.

The school is located at Whittier. Southern Pacific Railroad two blocks distant. Southern California Railroad, Los Nietos, two and one half miles. Thirteen miles by wagon road to Los Angeles.

HISTORY.

A statute establishing the school was passed March 11, 1889. It was opened for pupils July 1, 1891.

The site of 40 acres was donated by the Pickering Land and Water Company.

On the 23d of July, 1889, the Trustees bonded from A. H. Dunlap and Tyler heirs 120 acres of land for $24,000.

TRUSTEES AND OFFICERS.

Mrs. Adina Mitchell, of Los Angeles; appointed March 14, 1895.

Hon. W. R. Rowland, of Puente; appointed March 29, 1897.

Dr. Walter Lindley, of Los Angeles; appointed November 16, 1897.

They are allowed all necessary expenses incurred in the discharge of their duties.

The Secretary is T. B. Van Alstyne, of Whittier, and receives a salary, as Superintendent and Secretary, of $3,000 per annum.

The Treasurer is Hon. R. F. del Valle, of Los Angeles, whose salary is $600 per annum.

The Board of Directors or Managers meet once every three months. They also hold a regular monthly meeting on the first Saturday after the first Monday of each month. No per diem or mileage, but school expenses have been paid as follows:

From contingent fund	$97 20
From appropriation for support	59 80
Total amount expended for year ending June 30, 1898	$157 00

Of this amount, $68 80 was spent by Trustees in traveling to Sacramento, to consult with Governor and State Board of Examiners.

ACREAGE.

The total acreage is 160, and all is utilized. All can be irrigated, at a cost per annum of about $150.

COST OF BUILDINGS.

The entire cost of buildings, to date, is $227,942 28.

The cost of contemplated buildings was estimated to be about $90,000, with the employment of the boys and the utilizing of the brick manufactured at the school for the trades buildings.

In the event of the plans now adopted by the Board not being accepted by the Legislature, they ask that provision be made for the construction of the following buildings provided by said plans, viz.: Trades building, manual training department, cottage dormitory, school-rooms and teachers' quarters, dining-room and matron's and attendants' department for the small Company "B" boys, two dormitory barracks for the largest boys, and the gymnasium. The estimated cost of these buildings, without equipment, is $67,000.

The present condition as to utility is not satisfactory, because of lack of general facilities which the proposed buildings would give.

A transfer to other institutions of a portion of the inmates would not obviate, but require additional buildings.

VENTILATION.

The effect of the present system has apparently no injurious results, although not perfect.

The scientific ventilation of the buildings of this institution since its construction has not been practically considered, and what should be done in this respect, its cost, etc., the management has not had occasion to inquire through expert opinions and estimates.

FUEL.

The fuel used is crude oil, wood, and coal. Wood is used for bake oven, and coal in ranges.

The average daily consumption for fiscal year 1897–98 was: Coal, 930 pounds; crude oil, 16 barrels. The total daily cost was $24 28.

The cost for fiscal year 1897–98, including crude oil, coal oil, gasoline, coal, lamps for lights, was $8,860 53; and the cost per day was $24 28.

HEATING.

The heating is by steam, through pipes and radiators, and is far from perfect.

WATER.

The school owns five inches in the East Whittier Land and Water Co., and rents seven inches of same company, all for domestic and flushing purposes; also, rents irrigating water of same company; also, owns fifty shares in the "Strong Irrigating Ditch," for irrigating lower part of ranch. The system is no good, and cost to date is $17,995.

LAUNDRIES.

There are two laundries; one each at the boys' and girls' departments, and cost to date is $5,344.

LIGHTING.

Lighting is by electricity; is in good condition, and cost to date is $52,687 50.

SEWERAGE.

Sewerage is ordinary piping and flushing, and sewage is used on the farm. The system is absolutely imperfect, and cost to date $1,700.

The system of waterclosets is the flushing system, but the plumbing is almost worthless and water for flushing inadequate. The whole plumbing system would have to be remodeled to meet requirements, and would necessarily cost considerable.

BATHING.

Facilities for bathing are very imperfect, the cost of which was included in the original contract for the entire building and has not been segregated. The present condition is poor.

POWER.

The power is steam, and is fair.

Power and lighting plant, all under the same contract, cost $52,687 50. The present condition is fair.

CAPACITY.

Capacity at present time is, in the girls' department, 75, with two dormitories; boys' department, 300, with six dormitories. The dormitories are all in use, but not used to full capacity.

PUPILS.

Number of pupils September 1, 1898, was 307; number of boys, 254; number of girls, 53. There were on parole June 30, 1898, 165 boys and 10 girls.

COST OF MAINTENANCE.

Cost of maintenance per annum, figured on cost of food, clothing, furniture, and attendance and all operating expenses:

1896-97	$105,425 90
1897-98	100,135 20

Cost of maintenance, figured on last items, plus all items and cost of plant:

1896-97	$113,938 67
1897-98	119,515 59

PRIVATE CONTRIBUTIONS.

The private contributions to pupils of money, clothing, etc., is comparatively insignificant. They are received by the historian and stenographer, and distributed by the historian, upon the order of the captain, approved by the Superintendent. Account of same is kept and vised by the Superintendent.

Visitors are allowed upon the judgment of the Superintendent.

The amount received from pay pupils from 1891 to 1897 is $2,409 02.

ACCOUNTS.

The Board of Trustees certifies obligations of every character to the State Board of Examiners. The State Controller draws his warrant against the State Treasurer for the aggregate amount of the schedule. The warrant is delivered to D. O. Mills Banking Company, which, under power of attorney, collects the amount from the State Treasurer. This bank's check is drawn, payable to the Board of Trustees of this institution, for the aggregate amount; is indorsed by the President of the Board, payable to the Farmers and Merchants' Bank of Los Angeles, which is the depository of the funds, in the name of the Treasurer. The Treasurer of the school, selected under Section 13 of the Act establishing this institution, draws separate checks, payable to those entitled to receive the same; checks of the Treasurer must correspond with original schedules, copies of which are held by the bank for reference before payment. The Treasurer gives a bond of $20,000, furnished by the officers of the bank.

Requisitions are submitted to the Superintendent for his consideration, and after being signed by him are left in charge of the commissary clerk; he issues the articles required on requisitions.

Inventories are taken in June of each year by all the departments of the school, and preserved in abstract form. Inventories are taken by the clerk and the heads of each department.

Inventory of the commissary is taken at the end of each month.

PURCHASES.

The amount of appropriation for support for the fiscal year ending June 30, 1898, was $54,400.

Contract goods	$33,718 67, or 61.98 per cent.
Non-contract goods	15,079 23, or 27.72 per cent.
Miscellaneous (general expense)	5,602 10, or 10.30 per cent.

Goods are mostly bought in Los Angeles and delivered to the Commissary.

CLINICAL RECORDS.

Clinical records consist of medical record in hospital and a daily clinical report to the Superintendent.

EMPLOYÉS.

All employés are recorded in a book called "register of employés," wherein record of employment or discharge is kept. This book shows that there has been 301 persons employed, discharged, or resigned since 1889.

There are at present 76 employés, whose salaries range from $25 to $250 per month.

The accommodations for employés are not sufficient.

Employés, except teachers, are subject to call for extra duty at all times they are off duty.

Two days in every forty days, and fourteen days' furlough is granted during each year, subject to call at any hour, however.

References are required of employés to procure situations, and application blanks are furnished.

PRODUCTION.

The average production of milk is forty gallons per diem. Other produce and manufactures are from the farm and garden, tailor shop, shoeshop, bakery, printing office, blacksmith shop, carpenter shop, and conservatory; which is used almost exclusively in the institution.

All inmates are employed.

Nothing at present can be produced for sale or delivery to other institutions, except fruit, until canning and other trades buildings and equipments are provided.

LIBRARY.

There are 2,600 volumes, procured through donation and purchase. The distribution of books is under the supervision of a librarian, in accordance with adopted rules.

RELIGIOUS SERVICES.

Pupils attend their respective churches in the town of Whittier every Sabbath, special services being furnished by the different denominations, Catholic, Quaker, Methodist, and Episcopalian.

PUNISHMENT AND CORRECTIONS.

In the girls' department is the merit system and deprivation of privileges, no corporal punishment. In the boys' department slight corporal punishment is administered in serious offenses, under the supervision of the Superintendent or Assistant Superintendent, of which a full record is kept—guard line, isolation, deprivation of privileges, and increased tasks.

EDUCATIONAL ADVANTAGES.

There is a thoroughly graded scholastic department: Common school course, same as in Los Angeles County; business course, including stenography and typewriting; also, instruction in the various trades.

EMPLOYMENT OF INMATES.

The character of the work is such that it is impracticable to employ generally the pupils in confidential relations which involve the consideration and treatment of pupils, for the reason that they reveal the private and confidential matters of the institution, which creates friction and disorder, and affects seriously the discipline of the school. Whenever they can be employed in the office or in the departments, due regard to the above fact is given.

ADVERTISING FOR SUPPLIES.

Advertising for supplies is by two newspapers published in Los Angeles, for two weeks.

MAINTENANCE.

The annual and per diem cost of maintenance of officers and pupils, each, for 1897–98, is as follows:

	Pupils.	Officers.
Per annum	$92,706 91	$6,061 39
Per diem	253 99	16 61

CONTINGENT FUND.

The total amount received into contingent fund since inauguration to November 1, 1898, is	$7,036 17
Total amount expended since inauguration	6,095 86
Balance on hand	$940 31

Nothing expended during seven years out of contingent fund for improvements and repairs. All expended for general expenses.

BOOKKEEPING.

The present system of accounts and bookkeeping is suitable, except that departmental books, kept by the departments themselves, should and will be introduced.

An account is kept by each department of the institution with each merchant creditor of the institution; also, with each article of consumption purchased by the school. No article is purchased or distributed throughout the school, except over the signature of the Superintendent.

A financial statement and statistical report are rendered to the Superintendent each month.

COST PER CAPITA PER ANNUM.

Fiscal Year.	Salaries.	Maintenance.	Furniture.
1892–93	$108 99	$175 27	$31 96
1893–94	117 84	166 29	7 33
1894–95	131 54	147 60	9 22
1895–96	129 82	135 35	7 28
1896–97	117 15	143 82	4 64

Per Capita Cost per Annum for 1897-98.

Salaries	$142 99
Food for inmates	47 09
Food for employés	16 93
Medicines	1 45
Clothing and wearing apparel	20 86
Furniture	4 12
Fuel, light, power	26 74
Farm and garden	7 65
Stationery	5 43
Telegraph, telephone and expressage	1 29
Crockery and tinware, soap and pearline, brooms and brushes, athletics, photo supplies, services of special officers, discharged pupils, rental of water, freight, general expense, hardware, etc.	27 60
Total	$302 15

CIVIL SERVICE.

No civil service rules are observed in this institution, in regard to employment of employés.

BOARDS, COMMISSIONS, ETC.

BOARD OF BANK COMMISSIONERS.

The present members of the Board are Paris Kilburn, of Salinas, Monterey County, appointed May 17, 1894; H. W. Magee, of Pasadena, Los Angeles County, appointed July 10, 1894; and John Markley, of Geyserville, Sonoma County. Term of office of each, four years.

Salary of each member of the Board is $3,600 per annum, and necessary traveling expenses, not to exceed for the three Commissioners the sum of $3,000 per annum, to be audited by the State Controller, and paid by the State Treasurer in same manner as the salaries and expenses of other State officers.

Secretary receives a salary of $200 per month, and is paid in the same manner as the Commissioners.

The total receipts collected by Bank Commissioners from banks, and paid State Treasurer as per vouchers on file, 1878 to 1898, inclusive, are $299,184 91, as follows:

1879	$13,913 60	1887	$16,050 50	1895	$18,178 20
1880	13,400 00	1888	15,300 00	1896	17,600 00
1881	13,400 00	1889	15,300 00	1897	17,600 00
1882	13,400 00	1890	15,300 00	1898	16,463 00
1883	13,400 00	1891	15,300 00		
1884	12,750 00	1892	15,300 00	Total	$299,184 91
1885	12,700 00	1893	15,355 77		
1886	13,393 00	1894	15,080 84		

Salary of each Commissioner was $3,000 per annum from 1878 to 1886, inclusive, and $3,600 from 1886 to date.

Salary of Secretary from 1878 to 1895 was $150 per month, and from May, 1895, $200 per month to date.

There are no other employés, all office work being done by the Secretary.

For the traveling expense of entire commission there was allowed $1,500 per annum from 1878 to May, 1895, and $3,000 per annum since that date, but have not required or used this last amount, and have called for lesser assessment.

Traveling expense of Secretary has been paid from Commissioners' traveling expense.

The incidental expenses of the Board and Secretary are covered under "stationery, fuel, and light," as per Bank Act, and from 1878 to 1886 were $200 per annum. From 1886 to 1895, $300 per annum; from 1895 to date, $500 per annum. This item covers all expense of office, other than rent, such as telephone, postage, light, stationery, etc.

STATEMENT OF AMOUNTS PAID FOR BANK LICENSES BY THE COMMERCIAL AND SAVINGS BANKS OF THE STATE OF CALIFORNIA, JUNE 30, 1898.

NOTE.—The amount collected from each bank is based upon its deposit on March 5, 1898, the rate being 8½ cents on each $1,000 of deposit.

SAN FRANCISCO SAVINGS BANKS.

		Assessment.
1.	Columbus Savings and Loan Society	$52 00
2.	French Savings and Loan Society	142 30
3.	German Savings and Loan Society	2,229 55
4.	Hibernia Savings and Loan Society	3,302 85
5.	Humboldt Savings and Loan Society	217 85
6.	Mutual Savings Bank	255 25
7.	San Francisco Savings Union	1,951 60
8.	Savings and Loan Society	469 80
9.	Security Savings Bank	273 70
10.	California Mortgage and Savings Bank	45 80
	Total San Francisco Savings Banks	$8,941 30

INTERIOR SAVINGS BANKS.

11.	Alameda	Alameda Savings Bank	$60 35
12.	Bakersfield	Producers' Savings Bank	9 85
13.	Berkeley	Berkeley Bank of Savings	11 65
14.	Eureka	Home Savings Bank	23 45
15.	Eureka	Savings Bank of Humboldt County	23 70
16.	Fresno	People's Savings Bank	18 35
17.	Hanford	Hanford Savings Bank	2 20
18.	Hollister	Hollister Savings Bank	2 05
19.	Hollister	Savings and Loan Bank of San Benito County	14 95
20.	Los Angeles	Columbia Savings Bank	20 00
21.	Los Angeles	German-American Savings Bank	60 80
22.	Los Angeles	Los Angeles Savings Bank	119 75
23.	Los Angeles	Main Street Savings Bank	31 30
24.	Los Angeles	Southern California Savings Bank	69 30
25.	Los Angeles	Security Savings Bank	108 20
26.	Los Angeles	Union Bank of Savings	17 60
27.	Marysville	Northern California Bank of Savings	47 60
28.	Merced	Merced Security Savings Bank	52 30
29.	Modesto	Union Savings Bank	17 60
30.	Oakland	Central Bank	114 30
31.	Oakland	Farmers and Merchants' Savings Bank	26 25
32.	Oakland	Oakland Bank of Savings	448 55
33.	Oakland	Oakland Loan and Investment Company	7 40
34.	Oakland	Union Savings Bank	252 10
35.	Pasadena	Union Savings Bank	13 35
36.	Redlands	Savings Bank of Redlands	6 90
37.	Riverside	Riverside Bank and Trust Company	15 90
38.	Sacramento	Farmers and Mechanics' Savings Bank	44 55
39.	Sacramento	People's Savings Bank	61 45
40.	Sacramento	Sacramento Bank	267 75
41.	Santa Ana	Orange County Savings Bank	16 90
42.	Santa Barbara	Santa Barbara Savings and Loan Bank	26 10
43.	San Bernardino	Savings Bank of San Bernardino	95
44.	Santa Cruz	City Savings Bank	35 25
45.	Santa Cruz	People's Savings Bank	15 90
46.	Santa Cruz	Santa Cruz Bank of Savings and Loan	47 35
47.	San Diego	San Diego Savings Bank	17 10
48.	St. Helena	Savings Bank of St. Helena	6 20
49.	San José	San José Safe Deposit Bank of Savings	178 90
50.	San José	Security Savings Bank	23 80
51.	San José	Union Savings Bank	64 10
52.	Tulare	Tulare Savings Bank	1 90
53.	Visalia	Visalia Savings Bank	10 05
54.	Watsonville	Pajaro Valley Savings and Loan Society	14 20
55.	Watsonville	Watsonville Savings Bank	17 85
56.	Woodland	Yolo County Savings Bank	23 65
	Total Interior Savings Banks		$2,469 70

SAN FRANCISCO COMMERCIAL BANKS.

		Assessment.
1.	American Bank and Trust Company	$25 40
2.	Anglo-Californian Bank, Limited	392 20
3.	Bank of California	656 85
4.	Bank of British Columbia	100 65
5.	Bank of British North America	74 00
6.	Bank of Commerce	9 85
7.	California Safe Deposit and Trust Company	159 55
8.	Columbia Banking Company	14 50
9.	Donohoe-Kelly Banking Company	127 55
10.	London, Paris, and American Bank, Limited	190 20
11.	London and San Francisco Bank, Limited	86 50
12.	Swiss-American Bank	11 10
13.	Tallant Banking Company	50 50
14.	Union Trust Company	261 60
15.	Wells, Fargo & Co's Bank, Limited	275 40
	Total San Francisco Commercial Banks	$2,435 85

INTERIOR COMMERCIAL BANKS.

16.	Alameda	Bank of Alameda	$12 75
17.	Alhambra	Bank of Alhambra	4 60
18.	Anaheim	Citizens' Bank of Anaheim	7 15
19.	Antioch	Bank of Antioch	6 95
20.	Arcata	Bank of Arcata	10 90
21.	Auburn	Placer County Bank	19 55
22.	Azusa	Azusa Valley Bank	11 50
23.	Bakersfield	Bank of Bakersfield	14 95
24.	Bakersfield	Kern Valley Bank	18 30
25.	Berkeley	Commercial Bank of Berkeley	10 70
26.	Biggs	Sacramento Valley Bank	5 30
27.	Campbell	Bank of Campbell	5 30
28.	Chico	Bank of Butte County	23 40
29.	Chico	Bank of Chico	9 85
30.	Cloverdale	Bank of Cloverdale	3 75
31.	Colusa	Colusa County Bank	37 30
32.	Corona	Citizens' Bank	3 85
33.	Dixon	Bank of Dixon	11 20
34.	Downey	Los Nietos Valley Bank	3 00
35.	Elsinore	Consolidated Bank	1 60
36.	Escondido	Bank of Escondido	5 60
37.	Eureka	Bank of Eureka	15 65
38.	Eureka	Humboldt County Bank	8 50
39.	Ferndale	Ferndale Bank	8 75
40.	Fort Bragg	Bank of Fort Bragg	2 00
41.	Fresno	Bank of Central California	21 65
42.	Fresno	Farmers' Bank	25 15
43.	Fullerton	Fruit-Growers' Bank	4 95
44.	Gilroy	Bank of Gilroy	10 10
45.	Gonzales	Bank of Gonzales	5 50
46.	Hanford	Farmers and Merchants' Bank	9 60
47.	Hanford	Bank of Hanford	20 40
48.	Haywards	Bank of Haywards	4 40
49.	Healdsburg	Farmers and Mechanics' Bank	13 70
50.	Healdsburg	Bank of Healdsburg	9 80
51.	Hollister	Farmers and Merchants' Bank	6 80
52.	Hollister	Bank of Hollister	22 25
53.	Hueneme	Bank of Hueneme	7 20
54.	Jackson	Bank of Amador County	2 15
55.	Lakeport	Bank of Lake	1 00
56.	Lakeport	Farmers' Savings Bank	5 00
57.	Lemoore	Bank of Lemoore	2 75
58.	Livermore	Bank of Livermore	4 85
59.	Lodi	Bank of Lodi	5 20
60.	Lompoc	Bank of Lompoc	7 30
61.	Long Beach	Bank of Long Beach	5 95
62.	Los Angeles	Broadway Bank	14 60
63.	Los Angeles	California Bank	36 70
64.	Los Angeles	Citizens' Bank	34 85
65.	Los Angeles	East Side Bank	7 20
66.	Los Angeles	Farmers and Merchants' Bank	283 75
67.	Los Angeles	State Loan and Trust Company	57 55
68.	Los Gatos	Commercial Bank	2 90

INTERIOR COMMERCIAL BANKS—Continued.

			Assessment.
69.	Los Gatos	Bank of Los Gatos	6 45
70.	Madera	Commercial Bank of Madera	8 60
71.	Martinez	Bank of Martinez	25 15
72.	Marysville	Decker, Jewett & Co. Bank	14 80
73.	Marysville	The Rideout Bank	43 00
74.	Mendocino	Mendocino Discount Bank	5 60
75.	Merced	The Commercial, of Merced	16 65
76.	Modesto	Modesto Bank	17 50
77.	Monterey	Bank of Monterey	10 00
78.	Napa	James H. Goodman & Co. Bank	23 95
79.	Napa	Bank of Napa	12 25
80.	National City	People's State Bank	1 45
81.	Nevada City	Citizens' Bank	33 30
82.	Oakdale	Bank of Oakdale	8 00
83.	Oakland	California Bank	8 60
84.	Oceanside	Bank of Oceanside	1 35
85.	Ontario	The Citizens Bank	12 05
86.	Ontario	Ontario State Bank	3 75
87.	Orange	Bank of Orange	8 00
88.	Orland	Bank of Orland	3 30
89.	Oroville	Bank of Oroville	6 05
90.	Oroville	Bank of Rideout, Smith & Co.	13 45
91.	Palo Alto	Bank of Palo Alto	5 95
92.	Pasadena	San Gabriel Valley Bank	33 05
93.	Paso Robles	Citizens' Bank	6 60
94.	Petaluma	Bank of Sonoma County	20 00
95.	Petaluma	Petaluma Savings Bank	14 50
96.	Petaluma	The Wickersham Banking Co.	16 05
97.	Petaluma	The William Hill Company	20 65
98.	Pleasanton	Bank of Pleasanton	3 55
99.	Pomona	People's Bank	12 25
100.	Porterville	Pioneer Bank	6 40
101.	Red Bluff	Bank of Tehama County	27 30
102.	Red Bluff	Herbert Kraft Co. Bank	9 50
103.	Redding	Bank of Northern California	2 95
104.	Redding	Bank of Shasta County	14 50
105.	Redlands	Union Bank of Redlands	15 05
106.	Redwood City	Bank of San Mateo County	13 75
107.	Riverside	Orange-Growers' Bank	33 85
108.	Sacramento	California State Bank	79 80
109.	Salinas	Monterey County Bank	14 60
110.	Salinas	Salinas City Bank	21 25
111.	Santa Ana	Commercial Bank	13 75
112.	Santa Ana	Exchange Bank	9 75
113.	Santa Barbara	Commercial Bank	22 85
114.	San Bernardino	Farmers' Exchange Bank	12 50
115.	Santa Clara	Santa Clara Valley Bank	16 65
116.	Santa Cruz	Bank of Santa Cruz County	14 95
117.	Santa Cruz	City Bank	7 50
118.	Santa Cruz	People's Bank	5 60
119.	San Diego	Bank of Commerce	23 10
120.	St. Helena	Bank of St. Helena	7 80
121.	San Jacinto	State Bank	5 25
122.	San José	Bank of San José	72 40
123.	San José	Commercial and Savings Bank	24 25
124.	San José	Garden City Bank and Trust Co.	24 20
125.	San Leandro	Bank of San Leandro	15 30
126.	San Luis Obispo	Andrews Banking Company	27 95
127.	San Luis Obispo	Bank of San Luis Obispo	2 45
128.	San Luis Obispo	Commercial Bank	28 80
129.	San Luis Obispo	County Bank of San Luis Obispo	22 50
130.	Santa Maria	Bank of Santa Maria	14 30
131.	San Mateo	Bank of San Mateo	4 10
132.	Santa Monica	Bank of Santa Monica	10 10
133.	Santa Monica	Santa Monica Comercial Company Bank	6 80
134.	San Pedro	Bank of San Pedro	2 75
135.	Santa Rosa	Exchange Bank	6 90
136.	Santa Rosa	Santa Rosa Bank	39 80
137.	Santa Rosa	Savings Bank of Santa Rosa	36 85
138.	Sebastopol	Bank of Sebastopol	6 00
139.	Selma	Bank of Selma	9 10
140.	Sonoma	Sonoma Valley Bank	4 60
141.	Stockton	Farmers and Merchants' Bank	52 90

INTERIOR COMMERCIAL BANKS—Continued.

			Assessment.
142.	Stockton	San Joaquin Valley Bank	28 30
143.	Stockton	Stockton Savings and Loan Society	151 65
144.	Stockton	Stockton Savings Bank	50 40
145.	Suisun	Bank of Suisun	17 95
146.	Susanville	Bank of Lassen County	4 70
147.	Tehachapi	Bank of Tehachapi	70
148.	Templeton	Bank of Templeton	2 55
149.	Tomales	Bank of Tomales	10 30
150.	Tulare	Bank of Tulare	12 25
151.	Tulare	Tulare County Bank	3 00
152.	Tustin	Bank of Tustin	4 15
153.	Ukiah	Bank of Ukiah	11 20
154.	Vacaville	Bank of Vacaville	8 35
155.	Vallejo	Vallejo Commercial Bank	23 80
156.	Valley Ford	Dairymen's Bank	4 00
157.	Ventura	Bank of Ventura	19 50
158.	Visalia	Producers' Bank	9 75
159.	Visalia	Bank of Visalia	17 70
160.	Watsonville	Bank of Watsonville	6 80
161.	Watsonville	Pajaro Valley Bank	5 80
162.	Wheatland	Farmers' Bank	3 25
163.	Whittier	Bank of Whittier	4 25
164.	Williams	Bank of Williams	16 00
165.	Willows	Bank of Willows	17 70
166.	Winters	Bank of Winters	4 95
167.	Woodland	Bank of Woodland	19 40
168.	Woodland	Bank of Yolo	22 80
169.	Woodland	Farmers and Merchants' Bank	4 15
170.	Yreka	Siskiyou County Bank	16 50
171.	Yuba City	Farmers' Coöperative Union	12 30
		Total Interior Commercial Banks	$2,616 15

RECAPITULATION.

San Francisco Savings Banks	$8,941 30
Interior Savings Banks	2,469 70
San Francisco Commercial Banks	2,435 85
Interior Commercial Banks	2,616 15
Total	$16,463 00

On January 1, 1879, nearly one year after Bank Act was passed, there were but 83 State Banks, with assets and deposits as follows:

		Deposits.	Assets.
23	Savings Banks with	$57,846,025 40	$65,229,311 64
60	Commercial Banks with	25,091,954 40	68,103,950 30
83	Total	$82,937,979 80	$133,333,261 94

and reporting twice per annum at specific dates, on June 30th and December 31st, respectively.

In May, 1895, the law requiring three sworn reports annually, and for dates past, became effective; also, one examination of each bank by the Commissioners, no notification to be given as to when such examination should occur. The work of Commission and Secretary has trebled since the Act went into effect, and while the salaries have been slightly advanced, the cost to each bank has been decreased from 14½ cents to 8½ cents on each $1,000 of deposit, and the wonderful growth of the banking business of this State may be appreciated from the fact that the last report, August 31, 1898, shows State banks:

		Deposits.	Assets.
55	Savings Banks with	$136,119,225 91	$152,123,716 85
176	Commercial Banks with	67,224,396 23	125,354,778 28
23	Private Banks with	1,517,323 47	2,753,385 28
254	Total State	$204,860,945 61	$280,231,880 41

There are also 22 banks in liquidation, which are examined by the Commission, and which make three reports annually, and 34 national banks report to the Commission once a year, as an act of courtesy, whereby a complete statement of the financial condition of all banks in the State can be made annually. There is a total of 288 active banks, with

Deposits	$232,709,284 16
Coin	31,242,296 76
Assets	330,892,531 58

No provision is made by statute for the appropriation of any money by the Legislature: all expenses of the Bank Commission are collected from banks, and not from the people by taxation.

COMMISSIONERS OF THE BUILDING AND LOAN ASSOCIATIONS.

The assessments levied and collected from the various associations for the support of this Commission are levied on the shares in force in each association on the 31st of December in each year, pro rata, according to the par value of such shares, as provided in section 15 of the Act of March 31, 1893, and amended in 1895.

The rate of assessments for the several years has been:

For 1893 (seven months)	1.125 cents
For 1894	1.85 cents
For 1895	2.33 cents
For 1896	2.61 cents
For 1897	2.51 cents
For 1898	2.50 cents

For each share of a par value of $200, and and one half of such sums for each share of a par value of $100. These rates are found and based on reports of shares in force on December 31st of each year.

All assessments are levied as of January 1st of each year on such reports, for the calendar year, and are collected usually during the month of January of each year, and on payment the licenses are issued for the calendar year.

The present Board of Commissioners were appointed for four years, and are Frank H. Gould and Wm. Alex. Ryan, and took office on June 1, 1897. On October 4, 1898, Wm. Alex. Ryan died at Los Angeles, and the vacancy thus occurring has not been filled at this date. Term of office of Mr. Gould expires May 31, 1901.

The salary of each member of the Board is $2,400 per annum ($200 per month), and of the Secretary is $1,200 per annum ($100 per month). These salaries are paid from the fund created by an assessment levied yearly on the several associations.

The traveling and all other expenses are paid in the same manner as the salaries. There are no other employés.

The licenses are issued to associations for the calendar years, and the fees for same are collected in the same way, and for the same term. The receipts for 1893 were for seven months, from June 1st to December

31st; all others are for full calendar years, under the laws of 1893 and 1895.

Receipts for 1893	$3,637 90	
Receipts for 1894	6,084 53	
Receipts for 1895	7,176 20	
Receipts for 1896	7,618 96	
Receipts for 1897	7,563 11	
Receipts for 1898	7,450 62	
Total		$39,531 32
Less for half year, July 1, to December 31, 1898		3,790 00
Total available to June 30, 1898		$35,741 32
Total receipts from June, 1894, to 1898		$35,741 32
Salaries and expenses by fiscal years, from 1894 to 1898, ending June 30th, are as follows:		
Salaries of Commissioners	$24,400 00	
Salary of Secretary	3,843 35	
Traveling expenses	2,973 07	
Office expenses	1,803 89	
Rent	2,440 00	
Total payments		$35,460 31
Balance		$281 01
Unexpended	$79 70	
Surplus	201 31	
		$281 01

Upon the completion of the collections and the remittances of the money to the State, apportionments are made as follows:

Salaries	$6,000 00
Traveling	700 00
Office expenses	400 00
Office rent	480 00
	$7,580 00

BOARD OF PUBLIC WORKS.

The present members of the Commission are H. J. Corcoran, John Markley, C. W. Tatterson, T. B. Hall, and Gillis Doty, and were appointed May, 1897—three for four years, and two for two years.

Meetings are held at least once in each month. An appropriation of $300,000 was made by statute, approved March 17, 1897. The members of Board and Secretary receive no salaries, but an assistant is appointed to do all work for $25 per month. There is also a porter, who is paid a salary of $10 per month.

All bills are itemized and vouchers presented for everything over $1, and sworn to and audited by the Auditing Board, and presented to the State Board of Examiners for approval.

Bills are audited by State Controller, and paid by State Treasurer.

Traveling expenses of Commission amount to $207 88.

Traveling expenses of Commissioner of Public Works amount to $88 35. This includes all expenses from the organization of the board to date.

The Commission was organized March 17, 1897. Applications were at once made to the Secretary of War for permission to carry out the plans suggested in report of November 16, 1896. Permission was asked and granted by the Secretary of War to appoint the Government Engineer, Major Heuer, consulting engineer to this department.

In April, 1898, permission was first granted to begin work. The Elkhorn easement, a concrete weir 2,900 feet in length and 15 feet in width, has been completed.

The jetty system, for removing Newtown Shoals, has been completed. It comprises five jetties, aggregating about 6,000 feet in length.

Contracts have been let for the construction of all these cuts, except No. 8. No. 6 is now complete, and No. 7 will be completed by January 1, 1899. Nos. 3 and 4 will be finished by the middle of February.

On November 18, 1898, the total expenditures for this department were as follows:

Construction of Elkhorn weir	$26,541 54
About 250 acres of land for site and waterway	2,200 00
Jetty system, Newtown Shoals, piling brush, and stone	20,680 81
Cuts on San Joaquin River	12,081 25
Salaries of engineers and their assistants	7,887 50
Labor and incidental expenses	9,184 87
Traveling and incidental expenses, Commission and Auditing Bd.	296 23
Total	$78,872 20

It is estimated that to complete the work now under contract will bring the total expenditures up to $125,000, leaving a balance in the appropriation of $175,000.

The jurisdiction of this department should be extended so as to include all of the Sacramento, San Joaquin, Feather, and Tuolumne rivers, and Petaluma, Alviso, and Napa creeks. The improvements suggested would involve an expenditure not to exceed $200,000.

BUREAU OF LABOR STATISTICS.

The State Labor Commission is composed of one Commissioner and one Deputy Commissioner, and special agents not to exceed three. The Commissioner was appointed about May 1, 1895; his term expires about May 1, 1899. There are no meetings held; work of the department is held from day to day.

Salary of Commissioner is $3,000 per year; Deputy Commissioner, $1,800 per year; the salaries of other employés, as well as incidental expenses, are provided for by an appropriation of $4,350.

Traveling expenses of the department are paid upon claims audited by the State Board of Examiners. All bills are audited and paid by State Board of Examiners.

The income of the Commission is derived from an appropriation out of the General Fund of the State.

The office is maintained at Rooms 415, 416, 417, No. 503 California Street, San Francisco. Office hours, from 9 A. M. to 5 P. M.

The mode of securing employment for applicants is set forth in detail in the seventh biennial report of the Bureau of Labor Statistics, but the department was discontinued June 1, 1897, owing to the non-appropriation of sufficient funds with which to maintain the free employment system.

There are no data showing the receipts of the Commission previous to 1895. The receipts from appropriations are as follows: 1895–96, $9,300; 1896–97, $9,300; 1897–98, $9,150; 1898–99, $9,150. The decrease during the last two fiscal years is due to a slight cut in the appropriation made by the Legislature of 1897.

The expenditures of the department have been in accordance with the above appropriation, and have been exhausted each year. An additional deficiency was allowed by the Legislature of 1897, for the years 1895–96, in the sum of $1,600.

DEPARTMENT OF HIGHWAYS.

The present members of the Department are W. L. Ashe, Marsden Manson, and J. R. Price, and were appointed May 25, 1897. Their terms of office expire May 25, 1899. Meetings are held monthly, with additional meetings at call of chairman.

Salaries of the Board, Secretary, and other employés are as follows:

Commissioners	$3,000 per year.
Secretary	125 per month.
Stenographer	100 per month.
Janitor	40 per month.

Traveling expenses of Board and Secretary are paid by submission of certified bills to the full Board, and accompanied by receipts for all amounts over $1. These are audited by the Board and sent to the State Board of Examiners, and paid by warrants on the State Treasurer against the contingent fund.

All bills are audited and paid as above, except statutory salaries, which are paid by monthly warrants drawn by the Controller on the proper fund in the State Treasury.

There is no income of the Department, except from State appropriations. There have been no receipts of department from date of establishment up to and including June 30, 1898.

The amount of expenditures for the fiscal year of 1896–97, May and June, are as follows:

Amount appropriated		$3,000 00
Salaries of Commissioners	$900 00	
Salary of Secretary	125 00	
Salary of Stenographer	100 00	
Salary of Janitor	40 00	
Traveling expenses of Commissioners	130 95	
Carpet from John Breuner, purchased by predecessors	175 75	
Incidental expenses	571 65	
		2,043 35
Unexpended, and returned to General Fund		$956 65

For the forty-eighth fiscal year the salaries have been paid in full.

The fund allowed for traveling, etc., expenses, is	$4,250 00
Expended	4,235 40
Balance returned to General Fund	$14 60

BOARD OF HARBOR COMMISSIONERS OF THE PORT OF EUREKA, CAL.

Organized in 1870. No salaries or expenses a charge against the State.

The present members of the Board are: David Evans (President), I. R. Brown, and H. L. Ricks. They were appointed March, 1896, for

the term of four years. The term of office of the President expires the first Monday in July, 1899; of the Commissioners, March, 1900. Regular meetings are held on the second Friday in each month. Special meetings as business demands.

The salary of the Commissioners is $4 per day for every day actually employed. The salary of the Clerk is fixed by the Board at $3 per day for every day actually employed. The salary of the Harbormaster is fixed by the Commissioners, and paid by the City of Eureka, and is $3 per day for every day actually employed.

Traveling expenses of the Board and Secretary are paid by the County of Humboldt. Salaries of Commissioners, Clerk, and all other expenses of the Board are audited and allowed by Humboldt County, The salary of Harbormaster is allowed by the City of Eureka.

The Commission has no income. The expenditures are as follows:

Salaries of Commissioners	$4,806 00
Salary of Clerk	1,619 00
Salaries of Harbormaster and other employés	2,592 24
Traveling and incidental expenses	16,310 11
Total	$25,327 35

BOARD OF STATE HARBOR COMMISSIONERS FOR SAN DIEGO BAY.

The present members of the Board are: N. H. Conklin and F. H. Dixon, appointed March 12, 1896, and W. J. Prout, appointed December 21, 1897; term, four years. Meetings are held on the fourth Tuesday of each month.

The Commissioners for salaries are entitled to $25 per month each. The Secretary, $100 per month. Traveling expenses of the Board and Secretary are paid at present by personal individual funds.

Bills are audited and paid in all instances by Board of Harbor Commissioners.

All bills, excepting for salaries, are paid from revenues received from rents of tide lands.

The income of the Commission is about $30 per month. The receipts of the Commission, from date of establishment up to and including June 30, 1898, by years, are as follows:

May 15 to December 31, 1889	$229 50
January 1 to December 31, 1890	751 30
January 1 to December 31, 1891	612 00
January 1 to December 31, 1892	286 00
January 1 to December 31, 1893	36 50
January 1 to December 31, 1894	------
January 1 to December 31, 1895	128 00
January 1 to December 31, 1896	44 00
January 1 to December 31, 1897	211 00
January 1 to June 30, 1898	160 50
Total	$2,458 80

Expenditures for same period of time are as follows:

Year.	Total Expense.
1889	$206 20
1890	577 20
1891	561 90
1892	534 00
1893	-----
1894	36 00
1895	50 00
1896	112 25
1897	144 76
1898	206 57

MEDICAL SOCIETY OF THE STATE OF CALIFORNIA.

The income of the Board is derived from licenses issued (each, $5), and from advertisements in official registers of physicians and surgeons.

The Board of Medical Examiners is elected by the State Medical Society; they receive no appropriation from the State.

The present Board consists of Drs. C. C. Wadsworth, Washington Dodge, E. G. Frisbie, J. H. Barbat, E. E. Kelly, J. M. Williamson, and F. B. Carpenter, and were elected April, 1898. Their terms expire April, 1899. Meetings are held on the first Tuesday of each month.

The Secretary receives a salary of $50 per month; other members receive no salary.

There are no traveling expenses.

Claims are audited by the Board and paid by the Secretary.

The income for year ending April 5, 1898, was $2,839.

PILOT COMMISSIONERS, EUREKA.

The present members of the Board are: William Carson, Harry Kingston, and Peter Belcher, and were appointed June 20, 1885, for four years, or until their successors are appointed. Meetings are held on the first Monday of every third month.

No salary attaches to any Commissioner, nor are there traveling expenses. The Commission has nominally no income.

As shown by the report of the Secretary, the total receipts of the Commission since it was established have been $10, which was charged for a pilot's license, and the money paid for books. No salary has been paid to any one.

PILOT COMMISSIONERS, SAN FRANCISCO.

The present members of the Board are Charles Mayo and Philip Caduc, appointed March 16, 1895, and George T. Bohen, appointed March, 1897. The Commissioners hold office at the pleasure of the Governor, Senate confirming. The regular meetings are held on the first Monday in each month. Special meetings are called whenever necessary.

The Commissioners receive no salary; they receive fees—5 per cent of the pilotage collected, divided among the three Commissioners. The Secretary is paid $100 per month out of the fees of the Commissioners. The office rent and hire of janitor are also paid by the Commissioners from their fees. Incidental expenses are met in a like manner.

There are twenty bar pilots. They have in commission four large sailing boats. These vessels are owned by the pilots and maintained from their earnings. Each pilot is required to file a bond of $5,000. The pilotage collections for eight years ending with June 30, 1898, together with the gross and net earnings of the pilots in that period, are as follows. The difference between the gross and net earnings is the amount required for the maintenance of the business, the Commissioners' fees, and the sum returned to the ship:

	Gross Amount.	Net Amount.
1891	$150,061 37	$83,841 55
1892	181,858 91	106,871 02
1893	156,974 60	88,587 78
1894		81,888 62
1895	143,582 33	79,541 88
1896	158,000 96	86,649 81
1897	161,859 30	90,719 71
1898	153,365 13	82,358 33
Total		$700,458 70

Average per year for eight years, $8,755,734.

PORT WARDENS, SAN FRANCISCO.

The present Board of Port Wardens are: P. L. Henderson, H. R. Atwood, Nelson Provost; and Samuel Braunhart, whose term expires April, 1899. The terms of Messrs. Henderson, Atwood, and Provost expire in April, 1900. They do not receive any salary, but are paid for their services by the vessels employing them.

The only employé of the Board is a Secretary, who receives $100 per month, which is deducted out of the fees, the same as other expenses.

The fees received by each Warden for last month were $93. During the term of the members of the present Board, the average monthly dividends to each have been about $135; they do not receive any money whatever from the State. In former years the average monthly fee to each Warden was about $300.

They have nothing to do with coasting vessels or vessels laden with coal. The business depends entirely on ships arriving in port with general cargoes and sugar.

STATE BOARD OF AGRICULTURE.

The present members of the State Board of Agriculture, and the date upon which their term of office expires, are:

George Fox, of Clements	1899
F. D. Cobb, of Stockton	1899
John Mackey, of Sacramento	1899
John Boggs, of Princeton, Colusa County	1900
C. M. Chase, of San Francisco	1900
W. P. Mathews, of Tehama	1900
A. B. Spreckels, of San Francisco	1901
F. W. Covey, of Palo Alto	1901
J. W. Wilson, of Sacramento	1901
Park Henshaw, of Chico	1902
Frederick Cox, of Sacramento	1902
A. W. Barrett, of Los Angeles	1902

Meetings are held by the direction of the President, and are called from seven to ten times per year. In the interim, all business of importance is referred to the Executive Committee.

The Directors of the Board serve without salary or expenses of any kind. The Secretary receives $2,400 per year. The other employés are: stenographer, $720; janitor of building, $900; and night watchman of building, $600 per annum. The salaries of stenographer, janitor, and watchman are paid from the State appropriation. The salary of the Secretary is paid from the earnings of the association.

No traveling expenses of any kind are allowed.

Bills are audited by the Finance Committee, and are paid, under the law, by the Secretary. This refers to all bills other than legal contracts and current monthly expenses, which are directed by the Board, and paid by the Secretary without reference to the committee.

The State Agricultural Society has been in existence since 1854. Its income for the past two years has been between $90,000 and $95,000, which includes the $20,000 appropriation made by the State; the balance of the income is from receipts of the annual fair, rents, etc.

The expenditures vary as the season requires. Oftentimes they are in excess of the income. This deficiency is met by the Directors authorizing a loan to cover the amount. This is paid from the profits from subsequent years, the Board of Directors being personally responsible therefor.

From 60 to 75 per cent of the State appropriation is used for premium awards for agricultural and industrial products, and the remainder is charged to the care of the State property and general expenses of the exhibition.

CALIFORNIA STATE BOARD OF DENTAL EXAMINERS.

Office of the Secretary is in Benicia.

The present members of the Board, appointed for four years, are: G. S. Backman, President, appointed April, 1897; F. W. Bliss, appointed April, 1897; F. F. Tebbets, appointed April, 1897; F. H. Metcalf, appointed April, 1897; Thos. Morffew, appointed April, 1897; G. I. Drucker, appointed April, 1897; W. A. Moore, Secretary, appointed April, 1897.

One annual meeting is held in August of each year; special meetings are held oftener.

No salary is paid the Board, but traveling expenses are allowed and paid from the income of the Board.

Bills are audited by the Board and paid by the Secretary.

The income of the Board is derived from applicants for examination ($10 each), and indorsing diplomas ($10 each).

From December 1, 1896, to August 15, 1898, amount of collections was $1,343 49; expenditures, $1,322 80.

STATE BOARD OF EDUCATION.

The membership of the State Board of Education is stationary, and consists of the Governor, Superintendent of Public Instruction, and the Principals of the State Normal Schools (Sec. 1517, P. C.), and the President of the University, and the Professor of Pedagogy therein; and the

term of office is determined by the incumbency of the members of their respective offices.

Meetings are held on the call of the Secretary, who is the Superintendent of Public Instruction (Sec. 1520), and not less than twice a year.

The Secretary of the Board receives no specific compensation for such services. There are no employés.

The actual traveling expenses of the members of the Board incurred in attending meetings are audited by the Controller and paid out of the General Fund (Sec. 1522, P. C.).

The Board has no income, and hence no receipts.

There have been no expenditures for salaries of members of the Board, salary of Secretary, salaries of employés, or traveling and incidental expenses of the Secretary.

The expenditures for traveling expenses of the members of the Board for the years 1895 to 1898 inclusive, have been as follows:

	1895.	1896–97.	1898.
Martin Kellogg	$7 00	$6 50	
Elmer E. Brown	8 00	38 50	$5 75
Edward T. Pierce	182 00	224 00	91 35
Robert F. Pennell	25 10	60 05	
C. M. Ritter			13 85
C. W. Childs	27 25	73 50	
A. H. Randall		29 40	25 15
Totals	$249 35	$431 95	$136 10

CALIFORNIA STATE BOARD OF PHARMACY.

In 1896–97 the Board consisted of S. H. Melvin, President; W. M. Searby, J. H. Flint, J. W. Wood, R. J. Van Voorhies, H. J. Finger, and J. H. Dawson, Secretary.

Three meetings were held between August 1, 1896, and May 5, 1897, for examination of candidates for licentiates' and assistants' certificates, for registration of graduates, and general business.

Receipts and expenditures for the above period were:

Cash on hand, August 1, 1896	$1,693 06
Receipts to May 5, 1897	1,022 44
	$2,715 50
Expenses	2,702 33
Cash on hand, May 5, 1897	$13 17

Total registrations between the above dates: Pharmacists, 78; assistants, 58.

The present members of the Board are W. M. Searby, A. G. Orena, S. Oberdeener, C. F. Seifert, E. A. Baer, S. L. Waller, and H. M. Sale.

Seven meetings were held between May 5, 1897, and May 5, 1898, five of which were held in San Francisco, and two by committees (for examinations) at Los Angeles.

(NOTE.—The account for the year 1895–96 was made up to August 5th. Hence, this statement covers only the remainder of the year.)

Receipts.

May 5, 1897, cash on hand	$13 17
May 5, 1898, receipts	3,379 75
Due Treasurer	70 60
	$3,463 52

Disbursements.

Expenses to May 5, 1898	$3,463 52

The total registration between May 5, 1897, and May 5, 1898: Pharmacists, 1,016; assistants, 346.

Original registration for the year: Pharmacists, 67; assistants, 56.

CALIFORNIA STATE COMMISSION IN LUNACY.

No money is received by direct tax on the several hospitals for the maintenance of the Commission. All money for the support of the Commission is derived from drafts on the money appropriated for the support of the several State hospitals. The Commission received direct from each hospital, as follows:

Hospital.	Forty-eighth Fiscal Year.	Forty-ninth Fiscal Year.
Stockton	$669 40	$3,572 22
Napa	673 30	3,655 95
Agnews	434 12	2,471 85
Mendocino	209 87	1,541 58
Southern California	261 00	2,046 59
Totals	$2,247 69	$13,288 19

Statements are given, if desired, to the State hospitals, and they are notified from time to time of balances on the Controller's books.

The Commission was established by statute approved March 28, 1897.

The present members of the State Commission in Lunacy are: Governor James H. Budd, Attorney-General William F. Fitzgerald, Secretary of State L. H. Brown, and Secretary of the State Board of Health, W. P. Mathews, all ex officio; and the General Superintendent of State Hospitals, Dr. F. W. Hatch, appointed by the Governor. The term of office of the General Superintendent of State Hospitals is for four years. Ninety-four meetings of the Commission were held in the past eighteen months. Quarterly meetings of the Commission, Superintendents of the five State hospitals, and representatives of their Boards of Managers, are held for general discussion of hospital matters.

The only member of the Commission who receives a salary is the General Superintendent of State Hospitals, whose salary is fixed at $4,000. The Secretary's salary was $150 per month at the time of the organization of the Commission. It was raised to $175, October, 1897, and is now $200. The salaries and all expenses of the Commission are paid out of the money appropriated for the support of the insane.

Traveling expenses are paid from the same fund.

Bills of the hospital are audited, first by the local Board of Managers, and then by the State Commission in Lunacy, and last by the State Board of Examiners, and are paid on Controller's warrant. Bills drawn on the contingent fund are first allowed on estimate by the State Com-

mission in Lunacy. The estimates for all the expenses of the hospitals, whether on support, salary, or contingent fund, are first prepared by the Medical Superintendent, then indorsed by the Board of Managers, and afterwards allowed by the Commission in Lunacy. Contingent fund bills are paid by the Treasurer in accordance with these allowed estimates. No expenses which are not included in estimates are allowed from any fund.

It has, however, been collecting money due the State for transportation of insane persons from the several counties to the several hospitals; also collecting money expended by the counties for medical examinations of the insane; also money due several hospitals for care and maintenance of the insane at the rate of $15 per month. The total amount collected is as follows:

Collected for transportation and turned into the State Treasury from October, 18, 1898, to December, 1898	$1,641 25
For medical examination	293 75
For non-paying patients (paid hospitals through Commission)	9,641 85
Paid directly to hospitals (same account)	2,216 04
Total amount collected in period named	$13,792 89

For the two months and two days of the forty-eighth fiscal year, the salary of the General Superintendent was $722 20; that of the Secretary was $310; of the other employés, $436 80. The traveling expenses of the Commissioners were $231 45, and those of the Secretary, and incidentals, were $547 24. The total expenses of the forty-eighth fiscal year were $2,247 69.

The collections for board have all been made since March 4, 1898. Collections of the Commission now average $1,229 39 per month.

Collections for the fiscal year ending June 30, 1898:

From board accounts	$5,219 81
From board accounts (paid hospitals)	1,310 54
From commitment and examination expenses collected	1,115 50
Making a total of	$7,645 85

The Commission report to your committee that claims representing about $250,000 are in their hands for collection, and that the estates of nearly two thousand patients have been examined. A number of cases are now pending in the courts, and something over one hundred estates of deceased persons are being probated.

The expenses for the forty-ninth fiscal year were:

Salary of the General Superintendent, per year	$4,000 00
Salary of Secretary was	2,400 00
Salaries of other employés amounted to	4,964 65
Traveling expenses of Commissioners	703 75
Traveling expenses of Secretary and other employés, and incidentals	13,288 19
Total	$25,356 59

STATE MINING BUREAU.

The State Mining Bureau is located and has offices in the Pioneer Building on Fourth Street, San Francisco, but arrangements have been made whereby the offices and museum will be in the new Union Depot and Ferry House, at the foot of Market Street, San Francisco.

The present Board of Trustees are: W. S. Keyes, M.E., President; Thomas E. Bishop, Vice-President; J. E. Doolittle, Alexander F. Morrison, and J. F. Parks, appointed November 6, 1897. Term of office is four years; they receive no salary or expenses.

Regular meetings are held on the fifth or seventh day of each month; special meetings are only held when called by President or Vice-President.

The Curator of the Museum acts as secretary of the Board of Trustees. The salaries of other employés amount to, per month, $550. In the geological department the salaries amount to $555.

Extra help is employed at times. In the geological department the number of employés has varied, the payroll in this department having ranged from nothing to over $2,000 per month.

Salaries, as a rule, are paid from the "Appropriation for support of State Mining Bureau," or from the "Appropriation for geological field work." Sometimes they have been paid from the "Mining Bureau Fund."

Total traveling expenses of Secretary amounted to $22 for 1897–98.

All bills are audited by the Board of Trustees.

The income of the State Mining Bureau is now derived entirely from biennial appropriations, varying in amount. Formerly a part of the income was derived from a tax of 10 cents on each certificate of stock transferred on the books of any mining company, and for the first two or three years of the Bureau's course and existence.

Receipts from 1880 to 1898 were		$452,310 64
Salary of State Mineralogist, $3,000 per annum	$54,375 00	
Salary of Secretary, 2 years and 7 months	4,660 00	
		$59,035 00
Salaries of Bureau employés from 1880 to June 30, 1898		212,092 95
Traveling expenses of the geological department, from 1880 to July 1, 1898		51,840 07
Incidental expenses, rent, lithographing maps, showcases, library, laboratory, freight and express charges, postage, etc., from 1880 to June 30, 1898		128,915 87
Total expenditures		$451,883 89

STATE PRINTING OFFICE.

BUILDINGS.

The building erected for a Governor's mansion was converted to the uses of the Superintendent of State Printing, for a State Printing Office, by an Act of the Legislature approved March 30, 1874. While the building is illy adapted to the uses intended, it has been as well arranged as possible, and with the additions and changes recommended by the experts employed by the Legislature at its thirty-second session, will be as complete in its appointments as it is possible to make them in a building not especially built for manufacturing purposes.

FUEL.

Coal is used for generating steam to heat the building, and also to heat several machines, among which are the calendering machine, embossing press, steam tables in electrotyper's room, etc.

WATER.

Water is taken from the Sacramento City Waterworks, at a fixed rate of $90 per quarter.

LIGHTING.

The press-room is lighted by electricity, the bindery by both gas and electricity, and the composing room by gas. The entire building should be wired for electricity.

SEWERAGE.

The building is connected with the city sewer system. As a city ordinance requires that buildings be connected with a cesspool and the cesspool with the sewer, this will probably have to be done.

POWER

Is derived from the Sacramento Electric, Gas, and Railway Company; but owing to the uncertainty of the power during the dry season, it is necessary to retain the steam plant.

CAPACITY.

The capacity of the plant is taxed to its utmost during the sessions of the Legislature, but at other times, with improvements suggested, the facilities will be ample for the ordinary and economical demands of the several State institutions and departments.

BOOKKEEPING.

The present system is simple and accurate, and being a duplicate of the Controller's books, it is impossible for an error to occur, unless both sets of books—the Controller's and State Printer's—contain identical errors.

IMPROVEMENTS.

The experts employed by the Legislature at its thirty-second session made several recommendations with a view to greater economy in the affairs of the State Printing Office. We are of opinion that the money necessary to installing these betterments would be well spent, and the desired result obtained.

STATE VETERINARY MEDICAL BOARD.

The members of the Board are as follows:
Thomas Maclay, President, of Petaluma; appointed in March, 1893.
R. A. Archibald, Secretary, of Oakland; appointed in March, 1893.
H. F. Spencer, Treasurer, of San José; appointed in April, 1893.
W. B. Rowland, of Pasadena; appointed in March, 1893.
R. T. Whittlesey, of Los Angeles; appointed in March, 1893.
The term of office is for four years.
Meetings are held, in accordance with the law, once every six months; additional meetings at the call of the Chair.
The salaries of the Secretary and members of the Board consist of the payment of $5 a day, and all necessary expenses, while actually

engaged in the duties of their office. This is paid out of fees, etc., provided for in the Act creating the Board. Traveling expenses are paid out of the same fund. All moneys received in excess of salaries and expenses are paid into the State Treasury.

The sources of income are: examination fees, licenses, fines, and penalties for violations of the law.

Amount of receipts from March, 1893, to December, 1896, $1,226 25. Amount disbursed in same time, $1,132 18.

YOSEMITE VALLEY COMMISSIONERS.

Officers of the Commission are as follows: Hon. James H. Budd, Governor of California, ex officio President; Abbot Kinney, Vice-President; J. J. Lermen, Secretary and Treasurer. Office, Claus Spreckels Building, San Francisco.

Following are the Commissioners:

Abbot Kinney, of Los Angeles; term expires May 24, 1901.

Charles G. Clinch, of San Francisco; term expires May 24, 1901.

W. W. Foote, of Oakland; term expires June 10, 1901.

Chas. S. Givens, of San Francisco; term expires May 23, 1902.

Max Goldberg, of San Francisco; term has expired.

Wm. G. Kerckhoff, of Los Angeles; term expires May 23, 1902.

Wm. H. Metson, of San Francisco; term expires May 23, 1902.

Miles Wallace, of Madera; term expires November, 1900.

The Commissioners are appointed for four years. They are paid no salary. The Secretary's salary is fixed at $125 per month. There are no other employés, excepting the Guardian, whose salary is $1,500 per annum. The Guardian appoints the laborers in the valley.

The traveling expenses of the Board and Secretary are paid out of the appropriations made by the Legislature.

The appropriations made by the State from 1866 to June 30, 1898, are $321,522 33. In addition to this, the Commission is in receipt of an annual income from rents of the hotels and other privileges in the valley, amounting to about $2,700. Previous to the burning of the Stoneman House, two years ago, it was $3,300 per year. This is a fair estimate of the receipts from this source, for each year, for a number of years preceding.

Laborers are paid out of the appropriation for the particular work upon which they might be engaged.

The traveling expenses of Commissioners have always been about $1,500 a year. Notwithstanding the fact that during the last few years only $750 has been allowed for the traveling expenses of the Commissioners and Secretary, the necessary expenses have been double that amount, and the deficiency has been paid out of the Yosemite Fund, made up of the residue of rents above mentioned.

In a word, during the last ten years, the present Commission has not only paid all its own bills and done all the work allotted to it and left to it by the preceding Commission, but has paid the debts of the old Commission.

The Commission recommends that a permanent and substantial stone or brick structure be erected on the top of Glacier Point.

They also estimate the necessary running expenses of the Commission for the next two years as follows:

For labor in keeping the buildings, roads and trails, bridges, and river banks in the valley in good condition throughout the year, the sum of	$3,500 00
For supplies to make necessary repairs, etc.	5,000 00
For salaries	3,000 00
Office rent	600 00
Incidental office expenses	100 00
Traveling expenses	3,000 00
Labor in the Mariposa Big Tree Grove	5,000 00
Total	$20,200 00

These amounts do not include any allowance for the new buildings or bridges, for which special appropriation will be asked by this Commission of the next Legislature. Neither does it include the salary of the Guardian.

WHAT HAS BEEN DONE.

Three roads into the valley opened and kept open.
Hotel and saddle train charges reduced.
Old shanties torn down.
Underbrush in valley cleared away.
Trails put in first-class condition.
Bridges repaired. Sentinel Hotel bridge reconstructed.
Fences repaired and kept up.
New building constructed to take place of the burned Stoneman House, at cost of $5,600.
River banks protected by willow water-breaks and rock riprapping. Entire channel of river cleared of old stumps and logs.
Old debts of last Commission paid in full.
Glacier Point Hotel enlarged; new stable constructed; all at a cost of $750.

WHAT IS ASKED TO BE DONE.

Water system improved.
Electric light plant installed.
Provision for sprinkling roads.
Hotel at Glacier Point.
Twenty thousand dollars for each fiscal year should be appropriated for general purposes.
Twenty-five hundred dollars a year for clearing underbrush.
Fifteen hundred dollars a year for traveling expenses.
Twenty-five hundred dollars a year for the Mariposa Big Tree Grove.

STATE BOARD OF HARBOR COMMISSIONERS.

The State Board of Harbor Commissioners consists of three members, appointed by the Governor, for a term of four years.
The present members are E. L. Colnon, appointed March, 1895; P. J. Harney, appointed March, 1897; Rudolph Herold, Jr., appointed July, 1898.

REVENUE.

The Board derives its revenue from charges for dockage, tolls, wharfage, rents, sales, etc.

For the fiscal year ending June 30, 1898, the receipts for same amount, approximately, to $600,000 per annum; and were for the fiscal years ending June 30, 1897, and June 30, 1898, $1,143,784 10; drawn from San Francisco Harbor Improvement Fund, $416,233 23; total, $1,560,017 33.

Expenditures, 1897–1898, June 30th.

For salaries, construction, dredging, general expenses, etc	$1,078,702 47
Remitted to State Treasurer	481,314 86
	$1,560,017 33

All money collected by the Commission is received at the office of the Secretary. Bills, claims, payroll, employés, etc., are paid by the Secretary, as allowed by the Board. What balance that may remain in the Secretary's office, or in the bank, the first of each month, is remitted to the State Treasurer and credited to the San Francisco Harbor Improvement Fund.

The Board of Examiners do not pass on any bills of the Commission.

The Board have full and absolute power to employ and discharge employés, and expend the funds collected by them, and in their biennial report to the Governor make a summarized statement of receipts and expenditures.

RECEIPTS AND EXPENDITURES.

The receipts of the Commission from various sources from 1863 to June 30, 1898, have been $14,902,665.

The expenditures during the same time were $14,866,282 94, leaving a balance in the State Treasury on June 30, 1898, of $36,382 56.

The salaries of the clerical help and officers have been increased from 1897 to 1898 (one year), about $3,000; wharf-cleaning expense, about $6,000 during same time; office expenses and general expenditures, $9,400; Belt Railroad expenses, $7,000; fire account, $1,800; or a total of $27,200.

While there was a decrease in the net receipts of the Belt Railroad and from the fishermen's wharf, there was a net increase in receipts of $12,000. Thus showing an expenditure of $5,000 over the receipts.

The rents received from June, 1891, to June, 1898, are:

Seawall lots	$8,137 49
Bunkers, etc.	42,705 00
Ferry slips	63,375 00
Depot and advertising	4,765 00
Miscellaneous	9,208 98
Total rents	$128,191 47

The books of the Secretary show that "defalcations" in years past, and amounting to $5,460 55, still remain unsettled. This amount consists of several items, for the collection of some of which there are suits now pending.

Balance in the San Francisco Improvement Fund, as shown by the Secretary's books ($301,015), is misleading. The expert of the Board, in his statement, says that there is but $202,525, as shown by the State Treasurer's books. This difference is caused by the Treasurer not notifying the Harbor Commissioners of amounts received and paid out by him, other than the monthly transfer from San Francisco Harbor Improvement Fund of $4,631, as provided for in Section 5, Statutes of 1891.

BELT RAILROAD.

The cost of the Belt Railroad for construction and maintenance to June 30, 1898, has been $282,665 95. The revenue for the same time from sales, switching, etc., is $284,200 11.

Under the present condition of affairs, and unless the seawall is extended, there will be no need for further expenditures, except for maintenance and repairs.

SEAWALL.

The cost of construction of the seawall to date has been $1,612,911 22, and extends from the foot of Powell Street on the west, to a point just south of the Ferry Building.

A committee from the Manufacturers' Improvement Club of San Francisco has petitioned that the seawall be extended to the Pacific Mail dock, and that bonds be issued and payable by a sinking fund on the same plan as that provided for the building of the ferry depot.

There is monthly transferred from the San Francisco Harbor Improvement Fund to San Francisco Depot Sinking Fund $4,631, or, annually, $111,144. This is done in accordance with the statute providing for the Depot Sinking Fund.

In this fund there has been paid to June 30, 1898	$301,015 00	
Interest received on U. S. bonds	16,000 00	
		$317,015 00
Premiums paid U. S. bonds	$29,887 50	
Expenses of purchase	463 20	
Paid accrued interest	138 65	
Interest paid on San Francisco Depot bonds ($600,000)	84,000 00	
U. S. bonds purchased	170,000 00	
Cash in State Treasury	32,525 65	
		$317,015 00

ATTORNEY FEES.

During the four fiscal years, commencing July 1, 1894, and ending June 30, 1898, there was paid in attorney fees to others than the attorney of the board, $9,250.

ACCOUNTS AND BOOKKEEPING.

The system of accounts and bookkeeping used by the Harbor Commissioners differs in many respects from that used by other State institutions receiving appropriations from this State.

From the limited examination and evidence taken, it is all that is required, excepting that the system of checking requisitions in the purchasing agent's department could be materially improved upon.

Requisitions are made by the heads of different departments, on the purchasing agent, for the supplies necessary for the department's immediate use. No department is allowed to carry any stock of supplies. Inventories are taken monthly by the purchasing agent and storekeeper, and stock is counted every three months.

PURCHASES AND SUPPLIES.

Purchases of supplies, by and through the purchasing agent, amounts to about $90,000 per annum. The greatest portion of the sum is spent for coal, lumber and piles, and amounts to $73,000. Coal is bought on

contract; lumber, in the open market, and, it is claimed by the purchasing agent, below the market quotations.

A certain amount of "dead stock" is kept on hand, which, under the present system of purchasing, is not necessary. The purchasing agent is under a bond to the Board of Harbor Commissioners for $1,000. The cost of the purchasing department is about $4,500, or twenty-five per cent of the purchases other than what is contracted for, viz.: coal, lumber, and piles.

In some instances, tools that are worn out must be returned to head of department before new tools are given.

Daily and monthly reports are made from various departments.

The books and accounts are experted and verified by an expert accountant at stated intervals, by order of the Board.

All payrolls do not show the actual amounts paid monthly to employés. All persons not on the regular payrolls are paid upon order of the Board, and receipts are taken of the money so paid. A large amount of the revenue is expended in repairing wharves.

WHARVES.

The Pacific Street and Folsom Street wharves have been built in what is considered a substantial manner, on the plan of sinking a steel cylinder and filling the center up with concrete.

This style of wharf is much more expensive than the ordinary pile wharf, but will pay for itself in ten years in obviating expense of repairs. Unless this or a similar system is adopted, the preservation of piles and timbers on the wharves will continue to be a most expensive item. While the preservation methods, now in use, are materially beneficial to the piles and timbers, no plan has yet been found that will successfully preserve the wood from the inroad of the teredo and limnoria.

NEW FERRY DEPOT.

On June 30, 1898, there was a balance in the San Francisco Depot Fund of $20,826 77. There was in this fund originally, $600,000; premium on same $7,125; total, $607,125.

The money derived from the sale of bonds and the premium on same ($607,125) has been used in the construction of the Ferry Building. The cost of the foundation for same was $344,344 58.

The total cost of the Union Depot and Ferry House, and the foundation of same, is:

Paid from San Francisco Depot Fund	$605,446 77
Paid from San Francisco Harbor Improvement Fund	72,854 79
Paid cash at office	13,306 76
Cost of foundation	344,344 58
	$1,035,952 90

We find that in addition to the amount for which bonds were issued, there has been paid from the San Francisco Harbor Improvement Fund, and at the office of the Harbor Commissioners, $96,161 55 for additions, alterations, etc., to the Ferry Building.

The Union Depot and Ferry House, although now occupied by the Commissioners for their offices, by the railroad and transportation companies and by the United States Post Office Station "D", is not fully

completed. There yet remains the rooms of the Chief Engineer to be finished. The finishing of the mezzanine story was not contracted for until it was decided that the State Mining Bureau and the State Board of Trade would occupy same.

RECEIPTS.

The monthly receipts for rents for the Union Depot and Ferry House is approximately $1,731 (this includes rent to be paid by the State Board of Trade and the State Mining Bureau).

A lengthy examination and investigation of rumors of additional and extra charges, together with poor workmanship in the construction of the new ferry building, has been had, at which opportunity was given to all parties interested, viz.: State Board of Harbor Commissioners, supervising architect, contractors, and witnesses, to produce testimony in their own behalf.

In explanation of the figures furnished by Messrs. James W. Reid and W. B. Faville, architects employed as experts to examine into the details of the original and revised plans, Messrs. Reid and Faville have furnished the report in which is given their figures in detail of additions and deductions made on account of changes in original plans and contracts. In their report is included the contracts for masonry by Mr. C. F. McCarthy; cast iron and steel work by the Risdon Iron and Locomotive Works; roofing, skylights, and galvanized iron by William Cronan; and the carpentering, plastering, and glazing work by Bateman Brothers.

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REPORT OF THE COMMISSIONERS

FOR THE

Revision and Reform of the Law.

Volume I.

REVISED CIVIL CODE.

NOVEMBER 30, 1898.

A. CAMINETTI, ROBT. N. BULLA, T. W. H. SHANAHAN,
Commissioners.

BART BURKE, - - - SECRETARY.



SACRAMENTO:
A. J. JOHNSTON, : : : : : SUPERINTENDENT STATE PRINTING.
1899.

OFFICE OF THE

COMMISSION FOR THE REVISION AND REFORM OF THE LAW,

SACRAMENTO, CAL., November 30, 1898.

To HON. L. H. BROWN, Secretary of State, *Sacramento, Cal.:*

DEAR SIR: Accompanying this preliminary report of the Commission for the Revision and Reform of the Law, please find the revised Civil Code of California, as considered and agreed upon by said Commissioners.

The remainder of the work accomplished by said Commissioners, consisting of the revised Political Code of California, and suggestions affecting the Penal Code and the Code of Civil Procedure, as well as recommendations for new legislation on various subjects and the disposition of existing statutes not embodied in either of the Codes, including a general report on all the subjects considered, is withheld, owing mainly to the limited clerical force at the disposition of the Commissioners, and will be filed during the coming month. The transcriptions and comparisons thereof are being made with such haste as is consistent with the importance of the subjects treated.

Respectfully submitted.

A. CAMINETTI, *Chairman*,
ROBT. N. BULLA,
T. W. H. SHANAHAN,
Commissioners for the Revision and Reform of the Law.

BART BURKE,
Secretary.

THE CIVIL CODE

OF THE

STATE OF CALIFORNIA.

An Act to Revise, Amend, and Re-enact an Act entitled "An Act to Establish a Civil Code," Approved March 21, 1872.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Title and divisions of this act.

SECTION 1. This act shall be known as "The Civil Code of California," and is in four divisions, as follows:

I. The first relating to persons.

II. The second to property.

III. The third to obligations.

IV. The fourth contains general provisions relating to the three preceding divisions.

COMMISSIONERS' NOTE: The words "of the state" are omitted from this section for the reason that they do not appear in the acts establishing the Code of Civil Procedure and the Penal Code, and their omission will render the titles to the several codes uniform.

PRELIMINARY PROVISIONS.

Section 2. When code takes effect.
3. Not retroactive.
4. Rules of construction.
5. Provisions similar to existing laws, how construed.
6. Actions, proceedings, and rights not affected.
7. Holidays.
9. Business days.
10. Computation of time.
11. Certain acts not to be done on holidays.
12. Joint authority construed.
13. Words and phrases, how construed.
14. Certain terms defined.
18. Notice, actual and constructive.
19. Constructive notice.
20. Effect of repeal.
21. This act, how cited.

When code takes effect.

SEC. 2. This act shall take effect at twelve o'clock noon on the first day of July, eighteen hundred and ninety-nine.

Not retroactive.

SEC. 3. No part of it is retroactive, unless expressly so declared.

Rules of construction.

SEC. 4. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

Provisions similar to existing laws, how construed.

SEC. 5. The provisions of this act, so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof, and not as new enactments.

Actions, proceedings, and rights not affected.

SEC. 6. No action or proceeding commenced before this act takes effect, and no right accrued, is affected by its provisions.

Holidays.

SEC. 7. Holidays, within the meaning of this code, are every Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, the first Monday of September, the twenty-fifth day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States, or by the governor of this state, for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, or the twenty-fifth day of December shall fall upon a Sunday, the Monday following is a holiday.

SEC. 8. *Omitted.*

COMMISSIONERS' NOTE: By amendment of February 23, 1897 (Statutes of 1897, 14).

Business days.

SEC. 9. All other days than those mentioned in the last section are to be deemed business days for all purposes.

Computation of time.

SEC. 10. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

Certain acts not to be done on holidays.

SEC. 11. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

Joint authority construed.

SEC. 12. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

Words and phrases, how construed.

SEC. 13. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

Certain terms defined.

SEC. 14. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words have also in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes both real and personal property;

2. The words "real property" are coextensive with lands tenements, and hereditaments;

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

4. The word "month" means a calendar month, unless otherwise expressed; and,

5. The word "will" includes codicils.

SEC. 15. *Omitted.*

SEC. 16. *Omitted.*

SEC. 17. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 182), the three preceding sections were repealed, and for that reason the same have been omitted.

Notice, actual and constructive.

SEC. 18. Notice is:

1. Actual—which consists in express information of a fact; or,

2. Constructive—which is imputed by law.

Constructive notice.

SEC. 19. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.

Effect of repeal.

SEC. 20. No statute, law, or rule is continued in force because it is consistent with the provisions of this act on the same subject; but in all cases provided for by this act, all statutes, laws, and rules heretofore in force in this State, whether consistent or not with the provisions of this act, unless expressly continued in force by it, are repealed or abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this act provided.

This act, how cited.

SEC. 21. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as "The Revised Civil Code," adding, when necessary, the number of the section. Reference herein to any section of this code may be made by citing only the number thereof.

DIVISION FIRST.

PART I. PERSONS.
II. PERSONAL RIGHTS.
III. PERSONAL RELATIONS.
IV. CORPORATIONS.

PART I.

PERSONS.

Section 25. Minors, who are.
26. Periods of minority, how calculated.
27. Adults, who are.
29. Unborn child.
32. Custody of minors.
33. Minor, disabilities of.
34. Minor, rights of.
35. Minor, disaffirmance of contract of.
36. Cannot disaffirm contract for necessaries.
37. Certain obligations, cannot disaffirm.
38. Persons without understanding, disabilities and liabilities of.
39. Contracts of insane subject to rescission.
40. Powers of persons whose incapacity has been adjudged.
41. Minors, liable for wrongs, but not liable for exemplary damages.
42. Minors may enforce their rights.

Minors, who are.

SEC. 25. Minors are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

Periods of minority, how calculated.

SEC. 26. The period specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

Adults, who are.

SEC. 27. All other persons are adults.

SEC. 28. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 182), Section 28 was repealed, and for that reason the same has been omitted.

Unborn child.

SEC. 29. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

SEC. 30. *Omitted.*

SEC. 31. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874 (Amendments 1873–74, 182), the two preceding sections were repealed, and for that reason the same have been omitted.

Custody of minors.

SEC. 32. The custody of minors and persons of unsound mind is regulated by Part III of this division.

Minor, disabilities of.

SEC. 33. A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

Minor, rights of.

SEC. 34. A minor may make any other contract than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the titles on marriage and on master and servant.

Minor, disaffirmance of contract of.

SEC. 35. In all cases other than those specified in sections 36 and 37, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent.

Cannot disaffirm contract for necessaries.

SEC. 36. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

Certain obligations, cannot disaffirm.

SEC. 37. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

Persons without understanding, disabilities and liabilities of.

SEC. 38. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

Contracts of insane subject to rescission.

SEC. 39. A conveyance or other contract of a person of unsound mind but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission of this code.

Powers of persons whose incapacity has been adjudged.

SEC. 40. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration to capacity. But a certificate from the medical superintendent of the state hospital to which such person may have been committed, showing that such person has been discharged therefrom cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

COMMISSIONERS' NOTE: The amendment to this section consists in striking therefrom the words "or resident physician," and also the words "insane asylum," and inserting in lieu of the latter the words "of the state hospital." This amendment is recommended for the purpose of making the section consistent in terms with the provisions of an act of the Legislature creating a State Commission in Lunacy, approved March 31, 1897. (Stats. 1897, 311.)

Minors liable for wrongs, but not liable for exemplary damages.

SEC. 41. A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

Minors may enforce their rights.

SEC. 42. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PART II.

PERSONAL RIGHTS.

Section 43. General personal rights.
44. Defamation, how effected.
45. Libel defined.
46. Slander defined.
47. What publications are privileged.
48. Malice not inferred.
49. Protection to personal relations.
50. Right to use force.
51. All citizens of this State entitled to equal civil rights.
52. Penalty, damages.

General personal rights.

SEC. 43. Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

Defamation, how effected.

SEC. 44. Defamation is effected by:

1. Libel;

2. Slander.

Libel defined.

SEC. 45. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

Slander defined.

SEC. 46. Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;

2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;

3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;

4. Imputes to him impotence or want of chastity; or,
5. Which, by natural consequence, causes actual damage.

What publications are privileged.

SEC. 47. A privileged publication is one made—

1. In the proper discharge of an official duty;

2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law;

3. In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information;

4. By a fair and true report, without malice, in a public journal, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof, or of a verified charge or complaint made by any person to a public official, upon which complaint a warrant shall have been issued;

5. By a fair and true report, without malice, of the proceedings of a public meeting, if such meeting was lawfully convened for a lawful purpose and open to the public, or the publication of the matter complained of was for the public benefit.

Malice not inferred.

SEC. 48. In the cases provided for in subdivisions three, four, and five of the preceding section, malice is not inferred from the communication or publication.

Protection to personal relations.

SEC. 49. The rights of personal relations forbid:

1. The abduction or enticement of a husband from his wife, or of a parent from his child;

2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master;

3. The seduction of a wife, daughter, orphan sister, or servant;

4. Any injury to a servant which affects his ability to serve his master.

COMMISSIONERS' NOTE: Amendment consists in the insertion in Subdivision 1, after the word "abduction," of the words "or enticement," and is self-explanatory.

Right to use force.

SEC. 50. Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

All citizens of this state entitled to equal civil rights.

SEC. 51. All citizens within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, eating-houses, barber-shops, bath-houses, theaters, skating-rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens.

Penalty, damages.

SEC. 52. Whoever shall violate any of the provisions of the last preceding section, by denying to any citizen, except for reasons applicable alike to every race or color, the full accommodations, advantages, facilities, and privileges in said section enumerated, or by aiding or inciting such denial, or whoever shall make any discrimination, distinction, or restriction on account of color or race, or except for good cause, applicable alike to all citizens of every color or race whatever, in respect to the admission of any citizen to, or his treatment in, any inn, restaurant, eating-house, barber-shop, bath-house, theater, skating-rink, or other public place of amusement or accommodation, whether such place be licensed or not, or whoever aids or incites such discrimination, distinction, or restriction, for each and every such offense shall be liable in damages in an amount not less than fifty dollars, which may be recovered in an action at law brought for that purpose.

COMMISSIONERS' NOTE: The two foregoing sections are sections 1 and 2 of an Act approved Mach 13, 1897 (Stats. 1897, 137), here codified in proper place in Civil Code.

Unlawful to refuse admission to places of amusement.

SEC. 53. It shall be unlawful for any corporation, person, or association, or the proprietor, lessee, or the agents of either, of any opera house, theater, melodeon, museum, circus, caravan, racecourse, fair, or other place of public amusement or entertainment, to refuse admittance to any person over the age of twenty-one years, who presents a ticket of admission acquired by purchase, or who tenders the price thereof for such ticket, and who demands admission to such place; *provided*, that any person under the influence of liquor, or who is guilty of boisterous conduct, or any person of lewd or immoral character, may be excluded from any such place of amusement.

Penalty.

SEC. 54. Any person who is refused admission to any place of amusement contrary to the provisions of the last preceding section, is entitled to recover from the proprietor, lessee, or their agents, or from any person, corporation, or association, or the directors thereof, his actual damages, and one hundred dollars in addition thereto.

COMMISSIONERS' NOTE: The last two preceding sections are sections 1 and 2 of an act approved March 23, 1893 (Stats. 1893, 220), now inserted in the Civil Code.

PART III.

PERSONAL RELATIONS.

TITLE I. MARRIAGE. [55–161.]
II. PARENT AND CHILD. [193–230.]
III. GUARDIAN AND WARD. [236–257.]
IV. MASTER AND SERVANT. [261–290.]

TITLE I.

MARRIAGE.

CHAPTER I. THE CONTRACT OF MARRIAGE. [55–80.]
II. DIVORCE. [82–148.]
III. HUSBAND AND WIFE. [155–181.]

CHAPTER I.

THE CONTRACT OF MARRIAGE.

ARTICLE I. VALIDITY OF MARRIAGE. [55–63.]
II. AUTHENTICATION OF MARRIAGE. [68–79*a*.]
III. JUDICIAL DECLARATION OF VOID MARRIAGES. [80.]

ARTICLE I.

VALIDITY OF MARRIAGE.

Section 55. What constitutes marriage.
56. Minors capable of contracting marriage.
57. Marriage, how manifested and proved.
58. Certain marriages voidable.
59. Incompetency of parties to.
60. Of whites with negroes, mulattoes or Mongolians, void.
61. Polygamy forbidden.
62. Released from marriage contract, when.
63. Marriage contract without the state.

What constitutes marriage.

SEC. 55. Marriage is a personal relation arising out of a civil contract, to which the consent of the parties capable of making that contract is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization authorized by this code.

Minors capable of contracting marriage.

SEC. 56. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of sixteen

years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

COMMISSIONERS' NOTE: The word "sixteen" has been substituted for the word "fifteen," in order to harmonize this section with the provisions of the Penal Code as to the age of consent. (See Section 261 of the Penal Code.)

Marriage, how manifested and proved.

SEC. 57. Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases.

Certain marriages voidable.

SEC. 58. If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable.

Incompetency of parties to.

SEC. 59. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Of whites with negroes, mulattoes, or Mongolians, void.

SEC. 60. All marriages of white persons with negroes, mulattoes, or Mongolians, are illegal and void.

COMMISSIONERS' NOTE: The word "Mongolian" is added to this section to make it consistent with section 69, *infra*, which prohibits the issuance of a marriage license authorizing the marriage of a white person with a negro, mulatto, or Mongolian. (See section 69, *infra*.)

Polygamy forbidden.

SEC. 61. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved; *provided*, that in case it be dissolved, the decree of divorce must have been made and rendered at least one year prior to such subsequent marriage.

2. Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed or believed by such person to be dead, at the time such subsequent marriage was contracted; in

either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

Released from marriage contract, when.

SEC. 62. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other; unless both parties participate therein.

Marriage contract without the state.

SEC. 63. All marriages contracted without this state, which would have been valid by the laws of the country in which the same were contracted, are valid in this state.

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

Section 68. Marriage, how solemnized.
69. Marriage license.
70. By whom solemnized.
71. No particular form of solemnization.
72. Substantial requisites.
73. Certificate of marriage.
74. Certificate to parties and recorder.
76. Declaration to contain what.
77. To be acknowledged and recorded.
78. Action between the parties to determine validity.
79. Persons who may be married without license.
79*a*. Members of particular religious denominations.

Marriage, how solemnized.

SEC. 68. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but noncompliance with its provisions by others than the parties to a marriage does not invalidate that marriage.

Marriage license.

SEC. 69. All persons about to be joined in marriage must first obtain a license therefor from the county clerk of the county in which the marriage is to be celebrated, showing:

1. The identity of the parties;
2. Their real and full names and places of residence;
3. Their ages.
4. If the male be under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother, or guardian, or of one having the charge of such person, if any such be given; or that such nonaged person has been previously, but is not at the time, married.

For the purpose of ascertaining these facts, the clerk is

authorized to examine parties and witnesses on oath, and to receive affidavits, and he must state such facts in the license. If the male be under the age of twenty-one years, or the female be under the age of eighteen, and such person has not been previously married, no license shall be issued by the clerk, unless the consent in writing of the parents of the person under age, or of one of such parents, or of his or her guardian, or one having charge of such person, be presented to him; and such consent shall be filed by the clerk; *provided*, that the said clerk shall not issue a license authorizing the marriage of a white person with a negro, mulatto, or Mongolian.

By whom solemnized.

SEC. 70. Marriage may be solemnized by either a justice of the supreme court, judge of the superior court, justice of the peace, priest, or minister of the gospel of any denomination.

No particular form of solemnization.

SEC. 71. No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

Substantial requisites.

SEC. 72. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license.

Certificate of marriage.

SEC. 73. The person solemnizing a marriage must make, sign, and indorse upon, or attach to, the license, a certificate, showing:

1. The fact, time, and place of solemnization; and

2. The names and places of residence of one or more witnesses to the ceremony.

Certificate to parties and recorder.

SEC. 74. He must, at the request of, and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage.

SEC. 75. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 26, 1895 (Stats. 1895, 88), this section was repealed, and for that reason the same has been omitted.

Declaration to contain what.

SEC. 76. If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages, and residence of the parties;

2. The fact of the marriage;

3. That no record of such marriage is known to exist.

Such declaration must be subscribed by the parties and attested by at least three witnesses.

To be acknowledged and recorded.

SEC. 77. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property.

Action between the parties to determine validity.

SEC. 78. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the superior court, to have the validity of the marriage determined and declared.

Persons who may be married without license.

SEC. 79. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made.

Members of particular religious denominations.

SEC. 79*a*. The provisions of this chapter, so far as they relate to procuring licenses and the solemnizing of marriages, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages shall be declared, as provided in section 76, and shall be acknowledged and recorded, as provided in section 77. Where a marriage is declared as is provided in said section 76, the husband shall file such declaration with the county recorder within thirty days after said marriage, and upon receiving the same the county recorder shall record the same; and if the husband fail to make such declaration and file the same for record, as herein provided, he shall be liable to the same penalties as any person authorized to solemnize marriages, and who fails to make the return of such solemnization as provided by law.

COMMISSIONERS' NOTE: This section has been renumbered from section "79½" to section "79*a*," and the words "the Civil Code of this State" have been stricken out where they occur.

ARTICLE III.

JUDICIAL DECLARATION OF VOID MARRIAGES.

Judicial declaration of incestuous or void marriage.

SEC. 80. Either party to an incestuous or void marriage may proceed, by action in the superior court, to have the same so declared.

CHAPTER II.

DIVORCE.

ARTICLE I. NULLITY. [82–86.]
II. DISSOLUTION. [90–107.]
III. CAUSES FOR DENYING DIVORCE. [111–130.]
IV. GENERAL PROVISIONS. [136–148.]

ARTICLE I.

NULLITY.

Section 82. Cases where marriage may be annulled.
83. Action to obtain decree of nullity in certain cases, when and by whom commenced.
84. Children of annulled marriage.
85. Custody of children.
86. Effect of judgment of nullity.

Cases where marriage may be annulled.

SEC. 82. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party, for any time, freely cohabited with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable.

Action to obtain decree of nullity in certain cases, when and by whom commenced.

SEC. 83. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent;

2. For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife;

3. For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes mentioned in subdivision four: by the party injured, within four years after the discovery of the facts constituting the fraud;

5. For causes mentioned in subdivision five: by the party injured, within four years after the marriage;

6. For causes mentioned in subdivision six: by the party injured, within four years after the marriage;

Children of annulled marriage.

SEC. 84. Where a marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

Custody of children.

SEC. 85. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Effect of judgment of nullity.

SEC. 86. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

Section 90. Marriage, how dissolved.
91. Divorce, effect of.
92. Causes for divorce.
93. Adultery defined.
94. Extreme cruelty defined.
95. Desertion defined.
96. Desertion, how manifested.
97. In cases of stratagem or fraud, who commits desertion.
98. In cases of cruelty, where one party leaves the other, who commits desertion.
99. Separation by consent not desertion.
100. Separation and intent to desert not always coincident.
101. Consent to separate revocable.
102. Desertion, how cured. Effect of refusing condonation.
103. Wife must abide by husband's selection of home, or it is desertion on her part.
104. If the place is unfit, and the wife refuses to conform thereto, it is desertion by the husband.
105. Willful neglect defined.
106. Habitual intemperance defined.
107. Desertion, neglect, or habitual intemperance, for one year.

Marriage, how dissolved.

SEC. 90. Marriage is dissolved only:

1. By the death of one of the parties; or,

2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

Divorce, effect of.

SEC. 91. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, subject, however, to the provisions of Section 61.

COMMISSIONERS' NOTE: This amendment is suggested to harmonize the law as contained in the two sections, 91 and 61.

Causes for divorce.

SEC. 92. Divorces may be granted for any of the following causes:

1. Adultery;

2. Extreme cruelty;

3. Willful desertion;

4. Willful neglect;

5. Habitual intemperance;

6. Conviction of felony.

Adultery defined.

SEC. 93. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Extreme cruelty defined.

SEC. 94. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

Desertion defined.

SEC. 95. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Desertion, how manifested.

SEC. 96. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

In case of stratagem or fraud, who commits desertion.

SEC. 97. When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

In case of cruelty, where one party leaves the other, who commits desertion.

SEC. 98. Departure or absence of one party from the family dwelling-place, caused by cruelty or threats of bodily harm, from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but is desertion by the other party.

Separation by consent not desertion.

SEC. 99. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

Separation and intent to desert not always coincident.

SEC. 100. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Consent to separate revocable.

SEC. 101. Consent to a separation is a revocable act, and if one of the parties afterward, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

Desertion, how cured. Effect of refusing condonation.

SEC. 102. If one party deserts the other, and, before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

Wife must abide by husband's selection of home, or it is desertion on her part.

SEC. 103. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto it is desertion.

If the place is unfit, and the wife refuses to conform thereto, it is desertion by the husband.

SEC. 104. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

Willful neglect defined.

SEC. 105. Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

Habitual intemperance defined.

SEC. 106. Habitual intemperance is that degree of intemperance for the use of intoxicants which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

COMMISSIONERS' NOTE: The words "intoxicating drinks" have been stricken from this section and the general term "intoxicants" inserted in lieu thereof, for the purpose of including opium, morphine, cocaine, and other noxious and narcotic drugs.

Desertion, neglect, or habitual intemperance for one year.

SEC. 107. Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for divorce.

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

Section 111. Divorces denied, on showing what.
112. Connivance defined.
113. Corrupt consent, how manifested.
114. Collusion defined.
115. Condonation defined.

Section 116. Requirements necessary to condonation.
117. Condonation implies what.
118. Condonation, evidence of.
119. Condonation, when can be made.
120. Condonation, when void.
121. Condonation, how revoked.
122. Recrimination defined.
123. Condonation in a recriminatory defense a bar to such defense, when.
124. Divorces denied, when.
125. Unreasonable lapse of time defined.
126. Presumptions may be rebutted.
127. Limitation of time.
128. Residence, how long required.
129. Proof of actual residence required.
130. Divorce not to be granted by default.

Divorces denied, on showing what.

SEC. 111. Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

Connivance defined.

SEC. 112. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

Corrupt consent, how manifested.

SEC. 113. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts of which complaint is made.

Collusion defined.

SEC. 114. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Condonation defined.

SEC. 115. Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

Requirements necessary to condonation.

SEC. 116. The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;

2. Reconciliation and remission of the offense by the injured party;

3. Restoration of the offending party to all marital rights.

Condonation implies what.

SEC. 117. Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness.

Condonation, evidence of.

SEC. 118. Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from successive acts of ill-treatment, which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

Condonation, when can be made.

SEC. 119. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts of which complaint is made.

Condonation, when void.

SEC. 120. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

Condonation, how revoked.

SEC. 121. Condonation is revoked, and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Recrimination defined.

SEC. 122. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

Condonation in a recriminatory defense a bar to such defense, when.

SEC. 123. Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense,

unless the condonation be revoked, as provided in section one hundred and twenty-one.

COMMISSIONERS' NOTE: Evidently the legislature, in amending this section, *intended* to convey the idea that condonation of a cause for divorce pleaded as a recriminatory defense to an action for divorce, unless revoked as provided in section 121, after the lapse of two years became complete, and virtually extinguished the cause for divorce so condoned, provided the full period of such condonation was completed, and the condoned offense thereby extinguished, prior to the accruing or completion of the cause of divorce sued for to which said condoned offense was pleaded in bar by way of recrimination—under such circumstances it was intended that such condonation was a bar to the defense, viz.: to the condoned offense so pleaded. But this is almost or quite the reverse of what the section provides. The language used is equivalent to saying that after two years have elapsed from such condonation (not revoked) and prior to the accruing or completion of the cause of action sued on by the plaintiff, then such condonation is not a defense in bar of the defense pleaded by way of recrimination. In other words, condonation, after the lapse of two years, is inoperative, and the condoned offense is revived, and may be pleaded and proved in bar as a defense, which is absurd.

The Commissioners, however, see no good reason why condonation to an offense pleaded by way of recrimination should be conditioned or limited otherwise than is condonation of an offense upon which an action may be brought for divorce; therefore, they recommend the amendment of the section by striking out the last clause thereof. (See sections 96–100, 2 Bishop on Marriage and Divorce.)

Divorces denied, when.

SEC. 124. A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence; or,

3. In all other cases where there is an unreasonable lapse of time before the commencement of the action.

Unreasonable lapse of time defined.

SEC. 125. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offense.

Presumptions may be rebutted.

SEC. 126. The presumptions arising from lapse of time may be rebutted on showing reasonable grounds for the delay in commencing the action.

Limitation of time.

SEC. 127. There are no limitations of time for commencing actions for divorce, except such as are contained in section 124.

Residence, how long required.

SEC. 128. A divorce must not be granted unless the plaintiff has been a resident of the State for one year, and of the county in which the action is brought three months next preceding the commencement of the action. Such requirements as to residence shall not apply to a defendant filing an answer and cross-complaint in an action against such defendant.

COMMISSIONERS' NOTE: The supreme court of this state having held that "the cross-complaint itself must contain all the facts necessary to constitute a cause of action in favor of the defendant, and against the plaintiff, in the original complaint" (see *Harrison* vs. *McCormick*, 69 Cal. 616), this amendment is deemed necessary because of the manifest injustice of requiring a non-resident defendant to answer in an action for divorce without allowing him, at the same time, to file a cross-complaint in such action, because of his not being a resident of the State and county for the required time.

Proof of actual residence required.

SEC. 129. In actions for divorce the presumptions of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

Divorce not to be granted by default.

SEC. 130. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proofs of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

ARTICLE IV.

GENERAL PROVISIONS

Section 136. Relief may be adjudged, where separation is denied.
137. Expense of action, alimony.
138. Orders respecting custody of children.
139. Support of wife and children on divorce or separation granted to wife.
140. Security for maintenance and alimony.
141. Court shall resort to what, in executing certain sections.
142. If wife has sufficient support, court may withhold allowance.
143. Community and separate property may be subjected to support and educate children.
144. Legitimacy of issue.
145. Same.

Section 146. Community property and homestead, how disposed of on divorce.
147. Order of court for distribution of property.
148. Order subject to revision on appeal.

Relief may be adjudged, where separation is denied.

SEC. 136. Though judgment of divorce be denied, the court may, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

Expense of action, alimony.

SEC. 137. While an action for divorce is pending the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. When the husband willfully deserts his wife, she may, without applying for a divorce, maintain in the superior court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

Orders respecting custody of children.

SEC. 138. In an action for divorce the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

Support of wife and children on divorce or separation granted to wife.

SEC. 139. Where divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

Security for maintenance and alimony.

SEC. 140. The court may require the husband to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may

enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

Court shall resort to what, in executing certain sections.

SEC. 141. In executing the five preceding sections the court must resort:

1. To the community property; then,

2. To the separate property of the husband.

If wife has sufficient support, court may withhold allowance.

SEC. 142. When the wife has either a separate estate, or there is community property sufficient to give her alimony, or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of her husband.

Community and separate property may be subjected to support and educate children.

SEC. 143. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

Legitimacy of issue.

SEC. 144. When a divorce is granted for the adultery of the husband, the legitimacy of the children of the marriage begotten of the wife before the commencement of the action is not affected.

Same.

SEC. 145. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case.

Community property and homestead, how disposed of on divorce.

SEC. 146. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property and the homestead shall be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just;

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties;

3. If a homestead has been selected from the community property it may be assigned to the innocent party, either absolutely or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold, and the proceeds divided;

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

Order of court for distribution of property.

SEC. 147. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, whenever necessary for that purpose may order a partition or sale of the property and a division or other disposition of the proceeds.

Order subject to revision on repeal.

SEC. 148. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

CHAPTER III.

HUSBAND AND WIFE.

Section 155. Mutual obligations of husband and wife.
156. Rights of husband as head of family.
157. In other respects their interests separate.
158. Husband and wife may make contracts.
159. How far may alter their legal obligations.
160. Consideration for agreement of separation.
161. May be joint tenants.
162. Separate property of wife defined.
163. Separate property of husband defined.
164. Community property defined.
165. Inventory of separate property of wife.
166. Filing inventory notice wife's title.
167. Community property, when not liable for contracts of wife.
168. Earnings of wife not liable for debts of husband.
169. Earnings and accumulations of wife when living separate, separate property.
170. Husband's property not liable for ante-nuptial debts of wife.
171. Wife's property not liable for the debts of husband but liable for her own debts.
172. Power of the husband over community property.
173. Courtesy and dower not allowed.
174. Support of wife.
175. Husband not liable when abandoned by wife.

176. When wife must support her husband.
177. Property rights of husband and wife, governed by what.
178. Marriage settlement contracts, how executed.
179. To be acknowledged and recorded.
180. Effect of recording.
181. Minors may make marriage settlements.

Mutual obligations of husband and wife.

SEC. 155. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

Rights of husband, as head of family.

SEC. 156. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

In other respects their interests separate.

SEC. 157. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

Husband and wife may make contracts.

SEC. 158. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

How far may alter their legal obligations.

SEC. 159. A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation and may make provision for the support of either of them and of their children during such separation.

Consideration for agreement of separation.

SEC. 160. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

May be joint tenants.

SEC. 161. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

Separate property of wife defined.

SEC. 162. All property of the wife, owned by her before marriage, and that acquired afterward by gift, bequest, devise,

or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

Separate property of husband defined.

SEC. 163. All property owned by the husband before marriage, and that acquired afterward by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

Community property defined.

SEC. 164. All other property acquired after marriage by either husband or wife, or both, is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property. And in case the conveyance be to such married woman and to her husband, or to her and any other person, the presumption is that the married woman takes the part conveyed to her, as tenant in common, unless a different intention is expressed in the instrument, and the presumption in this section mentioned is conclusive in favor of a purchaser or incumbrancer in good faith and for a valuable consideration. And in cases where married women have conveyed, or shall hereafter convey, real property which they acquired prior to May nineteenth, eighteen hundred and eighty-nine, the husbands, or their heirs or assigns, of such married women, shall be barred from commencing or maintaining any action to show that said real property was community property, or to recover said real property, as follows: As to conveyances heretofore made from and after one year from March fourth, eighteen hundred and ninety-seven, and as to conveyances hereafter made from and after one year from the filing for record in the recorder's office of such conveyances respectively.

COMMISSIONERS' NOTE: This section was amended by an act approved March 4, 1897 (Stats. 1897, 63), and the date of approval of this act is inserted instead of the words "the date of the taking effect of this act," in effect making no change.

Inventory of separate property of wife.

SEC. 165. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

Filing inventory notice wife's title.

SEC. 166. The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife.

Community property, when not liable for contracts of wife.

SEC. 167. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband.

Earnings of wife not liable for debts of husband.

SEC. 168. The earnings of the wife are not liable for the debts of the husband.

Earnings and accumulations of wife when living separate, separate property.

SEC. 169. The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

Husband's property not liable for ante-nuptial debts of wife.

SEC. 170. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Wife's property not liable for the debts of husband, but liable for her own debts.

SEC. 171. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

Power of the husband over community property.

SEC. 172. The husband has the management and control of the community property, with the like absolute power of disposition, other than testamentary, as he has of his separate estate; *provided, however*, that he cannot make a gift of such community property, or convey the same without a valuable consideration, unless the wife, in writing, consent thereto.

Courtesy and dower not allowed.

SEC. 173. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

Support of wife.

SEC. 174. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

Husband not liable when abandoned by wife.

SEC. 175. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

When wife must support her husband.

SEC. 176. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself.

Property rights of husband and wife, governed by what.

SEC. 177. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

Marriage settlement contracts, how executed.

SEC. 178. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

To be acknowledged and recorded.

SEC. 179. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

Effect of recording.

SEC. 180. The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

Minors may make marriage settlements.

SEC. 181. A minor capable of contracting marriage may make a valid marriage settlement.

TITLE II.

PARENT AND CHILD.

CHAPTER I. CHILDREN BY BIRTH. [193–215.]
II. ADOPTION. [221–230.]

CHAPTER I.

CHILDREN BY BIRTH.

Section 193. Legitimacy of children born in wedlock.
194. Legitimacy of children born out of wedlock.
195. Who may dispute the legitimacy of a child.
196. Obligation of parents for the support and education of their children.
196*a*. Duty of one standing in place of parent to a minor child.
197. Custody of legitimate child.
198. Husband and wife living separate, neither to have superior right to custody of children.
199. When husband or wife may bring action for the exclusive control of children. Decree in such cases.
200. Custody of an illegitimate child.
201. Allowance to parent.
202. Parent cannot control the property of child.
203. Remedy for parental abuse.
204. When parental authority ceases.
205. Remedy when a parent dies without providing for support of child.
206. Reciprocal duties of parents and children in maintaining each other.
207. When parent is liable for necessaries supplied to child.
208. When parent not liable for support furnished child.
209. Husband not bound for support of wife's children by former marriage.
210. Compensation and support of adult child.
211. Parent may relinquish services and custody of child.
212. Wages of minors.
213. Right of parents to determine the residence of child.
214. Wife in certain cases may obtain custody of minor children.
215. Child legitimized by marriage of parents.

Legitimacy of children born in wedlock.

SEC. 193. All children born in wedlock are presumed to be legitimate.

Legitimacy of children born out of wedlock.

SEC. 194. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

Who may dispute the legitimacy of a child.

SEC. 195. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both

of them. Illegitimacy, in such case, may be proved like any other fact.

Obligation of parents for the support and education of children.

SEC. 196. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

Duty of one standing in place of parent to a minor child.

SEC. 196*a*. One standing in the place of a parent to a minor child is bound, in the absence of an express contract, to support and maintain such minor, and is not liable for the services of the latter.

COMMISSIONERS' NOTE: The above section is new, and is added in accordance with the decisions of the supreme court in *Starkey* vs. *Perry*, 71 Cal. 495, and *Larsen* vs. *Hansen*, 74 Cal. 320.

Custody of legitimate child.

SEC. 197. The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto.

Husband and wife living separate, neither to have superior right to custody of children.

SEC. 198. The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

When husband or wife may bring action for the exclusive control of children. Decree in such cases.

SEC. 199. Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, during the pendency of such action, or at the final hearing thereof, or afterward, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents, and the best interests of the children, and may at any time thereafter amend, vary, or modify such

order or decree, as the natural rights and the interests of the parties, including the children, may require.

Custody of an illegitimate child.

SEC. 200. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

Allowance to parent.

SEC. 201. The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Parent cannot control the property of child.

SEC. 202. The parent, as such, has no control over the property of the child.

Remedy for parental abuse.

SEC. 203. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

When parental authority ceases.

SEC. 204. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;

2. Upon the marriage of the child; or,

3. Upon its attaining majority.

Remedy when a parent dies without providing for support of child.

SEC. 205. If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

Reciprocal duties of parents and children in maintaining each other.

SEC. 206. It is the duty of the father, the mother, and the children of any poor person who has no estate of his own and is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such

parent is binding. Whenever such poor person becomes a state or county charge, such relative shall be liable for his support, and it shall be the duty of the district attorney to enforce such liability by civil action, where such poor person has no estate of his own.

COMMISSIONERS' NOTE: The amendments to this section are suggested because the section seemed to declare a duty simply, making no attempt to fix a legal liability. The Commissioners deemed it proper to compel relatives of the degree mentioned to support such poor person, rather than to permit him to become a charge upon the public, in cases where such poor person has no estate of his own.

When parent is liable for necessaries supplied to child.

SEC. 207. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

When parent not liable for support furnished child.

SEC. 208. A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

Husband not bound for support of wife's children by former marriage.

SEC. 209. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

Compensation and support of adult child.

SEC. 210. Where a child, after attaining majority, continues to serve and be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

Parent may relinquish services and custody of child.

SEC. 211. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

Wages of minors.

SEC. 212. The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

Right of parent to determine the residence of child.

SEC. 213. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

Wife in certain cases may obtain custody of minor children.

SEC. 214. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section two hundred and forty-six.

Child legitimized by marriage of parents.

SEC. 215. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

CHAPTER II.

ADOPTION.

Section 221. Child may be adopted.
222. Who may adopt.
223. Consent of wife necessary.
224. Consent of child's parents.
225. Consent of child.
226. Proceedings on adoption.
227. Judge's order.
228. Effect of adoption. Rights and duties.
229. Effect on former relations of child.
230. Adoption of illegitimate child by father.

Child may be adopted.

SEC. 221. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

Who may adopt.

SEC. 222. The person adopting a child must be at least ten years older than the person adopted.

Consent of wife necessary.

SEC. 223. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband,

without his consent; *provided*, the husband or wife, not consenting, is capable of giving such consent.

Consent of child's parents.

SEC. 224. A legitimate child cannot be adopted without the consent of its parents, if living; nor an illegitimate child without the consent of its mother, if living; except consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be habitually intemperate in the use of intoxicants, or who has been judicially deprived of the custody of the child on account of cruelty or neglect; neither is the consent of any one necessary in case of an abandoned child; *provided, however*, that any child being a half-orphan, and kept and maintained within any orphan asylum in this state for more than one year, may be adopted with the consent of the managers of such orphans' home without the consent of the parent, unless such parent has paid toward the expenses of maintenance of such half-orphan at least two dollars per month during the said time; and where the parent is a non-resident of this state, such child may be adopted with the consent of the managers of such home, whenever it has been left by its parents in such home for more than one year, whether the parent has contributed anything to its support or not, and the consent of the parent of such half-orphan is not necessary to its adoption, whenever the managers of the home are authorized to give such consent, as herein provided.

COMMISSIONERS' NOTE: Several amendments have been suggested to this section. The first, inserting the words "habitually intemperate in the use of intoxicants," being recommended for the reasons suggested in the Commissioners' note to section 106, *ante*. The change from two years to one year is for the purpose of harmonizing this section with section 243*a*, *post*, and also to harmonize the section with the provisions of an act of the Legislature relative to orphans, half-orphans, and abandoned children, found at page 13, of the statutes of 1880, and with the provisions of an act of the Legislature found at page 963, of the statutes of 1877-78, wherein it is provided that the period referred to should be one year. The repeal of that act has been recommended by the Commissioners. The next amendment consists in inserting the definite sum of two dollars per month instead of the words, "a reasonable sum," heretofore required by the section. It has been deemed best to fix a definite amount rather than to leave the question uncertain as to what constitutes "a reasonable sum." The last amendment consists in striking from the section the words "if able so to do." The Commissioners consider that the object of laws of this character should be the welfare of the child, and there is less danger of abuse and hardship by giving to the managers of these institutions the power conferred by the amendment, than by leaving open the question of the ability of the parents to contribute, thus making it possible for the parents to raise the question long after the adoption of the child, to the injury of such child and the detriment of society.

Consent of child.

SEC. 225. The consent of a child, if over the age of fourteen years, is necessary to its adoption.

COMMISSIONERS' NOTE: The recommended change from twelve to fourteen years is in accordance with the provisions of the code in reference to guardianship, the age at which a minor can select his own guardian being fixed at fourteen years.

Proceedings on adoption.

SEC. 226. The person adopting a child, and the child adopted, and the other persons, if within or residents of this state, whose consent is necessary, must appear before a judge of the superior court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of this state, then their written consent, duly proved or acknowledged, according to sections 1182 and 1183, shall be filed in said superior court at the time of the application for adoption.

Judge's order.

SEC. 227. The judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall henceforth be regarded and treated in all respects as the child of the person adopting.

Effect of adoption. Rights and duties.

SEC. 228. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

Effect on former relations of child.

SEC. 229. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward, and all responsibility for, the child so adopted, and have no right over it.

Adoption of illegitimate child by father.

SEC. 230. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the

consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

TITLE III.

GUARDIAN AND WARD.

Section 236. Guardian defined.
237. Ward defined.
238. Kinds of guardians.
239. General guardian defined.
240. Special guardian defined.
241. Appointment by parent.
242. No person guardian of estate without appointment and qualification.
243. Appointment by court.
243*a*. Managers of orphans' home or asylum to be appointed, when.
244. Guardian of non-resident ward.
245. Jurisdiction.
246. Rules for awarding custody of minor.
247. Powers of guardian appointed by court.
248. Duties of guardian of the person.
249. Duties of guardian of estate.
250. Relation confidential.
251. Guardian under direction of court.
252. Death of joint guardian.
253. Guardian, removal of.
254. Guardian appointed by parent, how superseded.
255. Guardian appointed by court, how suspended.
256. Release by ward.
257 Guardian's discharge.

Guardian defined.

SEC. 236. A guardian is a person appointed to take care of the person or property of another.

Ward defined.

SEC. 237. The person over whom, or over whose property a guardian is appointed, is called his ward.

Kinds of guardians.

SEC. 238. Guardians are either:

1. General; or,
2. Special.

General guardian defined.

SEC. 239. A general guardian is a guardian of the person or of all the property of the ward within this state, or of both.

Special guardian defined.

SEC. 240. Every other is a special guardian.

Appointment by parent.

SEC. 241. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent;

2. If the child be illegitimate, by the mother.

No person guardian of estate without appointment and qualification.

SEC. 242. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided; nor any control, direction, or management of such property, until he has given bond and qualified as such guardian.

COMMISSIONERS' NOTE: The amendment to this section consists in the addition of the sentence after the word "provided." The amendment is proposed to secure the ward in the management of its property, and the Commissioners deem the provision a proper and just one. The principle expressed in this section is the same as that contained in section 202, *ante;* as to the power of a guardian appointed by a court, see section 247, *infra.*

Appointment by court.

SEC. 243. A guardian of the person or property, or both, of a person residing in this state, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section 241, by the superior court, as provided in the Code of Civil Procedure.

Managers of orphans' home or asylum to be appointed, when.

SEC. 243*a*. When any orphan or half-orphan has been maintained in any orphans' asylum or orphans' home in the state of California for more than one year, the managers of said home or asylum shall be entitled to the guardianship of such child in preference to any other person; *provided, however*, that such managers shall not be appointed guardian of a minor child over fourteen years of age without its consent, nor shall this section preclude a court of competent jurisdiction from inquiring into the fitness of such managers for the guardianship of such child; but in exercising the power of the court to appoint guardians for minors, the managers of the home having the care of such child for more than one year, if there be no special reasons to the contrary in any particular case, shall be preferred in the guardianship of the person of the child to the

parent so leaving the child, without good cause therefor being shown, under the care of said home for said time.

COMMISSIONERS' NOTE: Section 243*a* is an Act of the Legislature of 1893 (See Statutes of 1893, 203), incorporated here as a new section.

Guardian of non-resident ward.

SEC. 244. A guardian of the property within this state of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the superior court.

Jurisdiction.

SEC. 245. In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

Rules for awarding custody of minor.

SEC. 246. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare, and if the child be of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

3. Of two persons entitled to the custody in other respects, preference is to be given as follows: (1) to a parent; (2) to one who was indicated by the wishes of a deceased parent; (3) to one who already stands in the position of a trustee of a fund to be applied to the child's support; (4) to a relative.

Powers of guardian appointed by court.

SEC. 247. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

Duties of guardian of the person.

SEC. 248. A guardian of the person is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place within the state, but not elsewhere without permission of the court.

Duties of guardian of estate.

SEC. 249. A guardian of the property must keep safely the property of his ward. He must not permit any waste or destruction of real property, nor make any sale of such property without the order of the superior court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward, at the close of his guardianship, in as good condition as he received it.

Relation confidential.

SEC. 250. The relation of guardian and ward is confidential, and is subject to the provisions of the title on trusts.

Guardian under direction of court.

SEC. 251. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Death of joint guardian.

SEC. 252. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

Guardian, removal of.

SEC. 253. A guardian may be removed by the superior court for any of the following causes:

1. For abuse of his trust;
2. For continued failure to perform its duties;
3. For incapacity to perform its duties;
4. For gross immorality;
5. For having an interest adverse to the faithful performance of his duties;
6. For removal from the state;
7. In the case of the guardian of the property, for insolvency; or,
8. When it is no longer proper that the ward should be under guardianship.

Guardian appointed by parent, how superseded.

SEC. 254. The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by section 253;
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority.

Guardian appointed by court, how suspended.

SEC. 255. The power of a guardian appointed by a court is suspended only:

1. By order of the court; or,

2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

3. The guardianship over the person of the ward, by the marriage of the ward.

Release by ward.

SEC. 256. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Guardian's discharge.

SEC. 257. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

SEC. 258. *Omitted.*

COMMISSIONERS' NOTE: The repeal of this section is recommended for the reason that it does not seem to have any proper place in this title, viz., Guardian and Ward. Its provisions are contained substantially in the chapter of the Political Code relating to the commitment of insane persons. (Statutes of 1897, p. 311.)

TITLE IV.

MASTER AND APPRENTICE.

Section 261. Minors may be apprenticed.
262. By whom.
263. Consent of minor necessary.
264. Indentures.
265. Same, not binding after death of master.
266. Same, what to be decided before they take effect.
267. Executor may bind.
268. Superior court may bind.
269. Obligation of master.
270. Money and clothes property of apprentice.
271. Treatment of apprentices.
272. Age to be asked.
273. Court to hear complaints.
274. Court may discharge apprentice.
275. Liability of master.
276. Action against apprentice for neglect, misdemeanor.
277. Court may dissolve apprenticeship.
278. Liability of parties to indenture.
279. Misdemeanor.
280. When master removes from this state.
281. Chapter, provisions of, to what extended.

Minors may be apprenticed.

SEC. 261. All minors, at the age of fourteen years, may be bound by covenant or indenture, in conformity with the stipulations herein specified, to any mechanical trade or art, or the occupation of farming, as apprentices; males to the age of twenty-one years, and females to the age of eighteen.

By whom.

SEC. 262. Minors, at or above the age of fourteen years, may be bound by the father, or in case of his death, incompetency, or where he shall have willfully abandoned his family for one year, without making suitable provision for their support, or is habitually intemperate in the use of intoxicants, or is a vagrant, then by their mother, or by their legal guardian; and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves, with the approbation of the superior court of the county where they reside; but the power of a mother to bind her children, whether legitimate or illegitimate, shall cease upon her subsequent marriage, and shall not be exercised by herself or her husband, at any time during her marriage, without the approval of the superior court of the county wherein such minor resides.

Consent of minor necessary.

SEC. 263. In all cases, the consent of the minor, personally, is required as a party to the covenant, and should be so expressed in the covenant of indenture, and testified by his or her signing the same.

Indentures.

SEC. 264. Indentures shall be signed, sealed, and delivered, in duplicate copies, in the presence of all the parties concerned; and when made with the approbation of the superior court, or a judge thereof, in vacation, such approbation shall be certified in writing indorsed upon each copy of the indenture. One copy of the indenture shall be kept for the use of the minor by his parent or guardian (when executed by them respectively), but when made with the approbation of the court, it shall be deposited in the safe-keeping of the clerk of said court for the use of the minor. The other copy shall be held by the master, and delivered up by him to the apprentice at the expiration of his term of service.

Same, not binding after death of master.

SEC. 265. No indenture of apprenticeship, made in pursuance of this title, shall bind the minor after the death of his

master; but the apprenticeship shall be thenceforth discharged, and the minor may be bound out anew.

Same, what to be decided before they take effect.

SEC. 266. Facts of incapacity, desertion, habitual intemperance, and vagrancy shall be decided in said court by a jury, before the indenture shall take effect, and an indorsement on the indenture, under seal of the court, that the charge or charges are proved, shall be sufficient evidence of the mother's power to give such consent; but if the jury do not find the charge or charges to be true, the person at whose instance such proceedings may have been had shall pay all costs attending the same.

Executor may bind.

SEC. 267. The executor who, by the will of the father, is directed to bring up his child to a trade or calling, shall have power to bind such by indenture in like manner as the father, if living, might have done.

Superior court may bind.

SEC. 268. When any minor who is poor, homeless, chargeable to the county, or an outcast, has no visible means of obtaining an honest livelihood, it shall be lawful for the superior court to bind such apprentice until, if a male, he arrives at the age of twenty-one, and if a female, to the age of eighteen; and proceedings therefor may be instituted by any citizen within the jurisdiction of said court, and no fees or compensation shall be charged or received, by any officer for any act in connection with such proceedings.

Obligation of master.

SEC. 269. It shall be unlawful for any master to remove an apprentice out of this state; and in all indentures by said court for binding out an orphan, or homeless minor, as an apprentice, there shall be inserted, among other covenants, a clause to the following effect: That the master to whom such minor shall be bound shall comply with the laws of this state relating to the compulsory education of children, and shall give him requisite instruction in the different branches of his trade or calling, and at the expiration of the term of service shall give him at least the sum of one hundred dollars, and suitable clothing of the value of at least twenty-five dollars.

Money and clothes, property of apprentice.

SEC. 270. All money and clothes referred to in the foregoing section are the sole property of the apprentice, to whom the

master is accountable for the same, and he shall pay and deliver the same to the apprentice personally.

Treatment of apprentices.

SEC. 271. Parents and guardians and the said court shall, from time to time, inquire into the treatment of the children bound by them, respectively, or with their approbation; and the judges of the said courts shall be responsible for the charge of indentured apprentices bound by the approbation of their predecessors in office, and defend them from all cruelty, neglect, breach of contract, or misconduct on the part of their masters.

Age to be asked.

SEC. 272. The age of every apprentice shall be inserted in the indenture; and all indentures entered into otherwise than in this title provided shall be void.

Court to hear complaints.

SEC. 273. The superior court shall hear the complaints of apprentices, who reside within the county, against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, want of instruction in the different branches of their trade or calling, or that they are in danger of being removed out of the state, or any violation of the indenture of apprenticeship; and the court may hear and determine such cases, and make such order therein as will relieve the party in the future.

Court may discharge apprentice.

SEC. 274. The superior court shall have power, where circumstances require it, to discharge an apprentice from his apprenticeship, and in case any money, or other thing, has been paid or contracted to be paid, by either party in relation to such apprenticeship, the court shall make such order concerning the same as shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the superior court, it shall be the duty of the court, if found necessary, again to bind such apprentice.

Liability of master.

SEC. 275. Every master shall be liable to an action on the indenture for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and shall be applied and appropriated to his use by the person who shall recover the same,

and shall be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If such action is not brought during the minority of such apprentice, it may be commenced in his own name at any time within two years after coming of age.

Action against apprentice for neglect, misdemeanor.

SEC. 276. An apprentice who shall be guilty of any gross misbehavior, or refusal to do his duty, or willful neglect thereof, shall render himself liable to the complaint of the master in the superior court of the county wherein he resides, which complaint shall set forth the circumstances of the case; and to said complaint shall be attached a citation, signed by the clerk of said court, requiring the apprentice, and all persons who have covenanted in his behalf, to appear and answer to such complaint, which complaint and citation shall be served on them in the usual manner of serving civil process.

Court may dissolve apprenticeship.

SEC. 277. The court shall proceed to hear and determine the cause, and after a full hearing of the parties, or if the adverse party shall neglect to appear after due notice, the court may render judgment or decree that the master be discharged from the contract of apprenticeship, and for the costs of suit; such costs to be recovered from the parent or guardian of the minor, if there be any who signed the indenture, and execution therefor issued accordingly; and if there be no parent or guardian liable for such costs, execution therefor may be issued against the minor, or the amount thereof may be recovered in an action against him after he shall arrive at full age.

Liability of parties to indenture.

SEC. 278. The parties to an indenture shall also be liable to the master, in an action on the indenture, for the breach of any covenant on their part therein contained, committed before the master was so discharged from such indenture.

Misdemeanor.

SEC. 279. It shall be unlawful for any person willfully to entice, counsel, or persuade to run away any apprentice, or employ, harbor, or conceal such, knowing said apprentice to be a runaway; and the parties so offending shall be guilty of a misdemeanor.

When master removes from this state.

SEC. 280. Whenever any master of an apprentice shall wish to remove out of this state, or to quit his trade or business, he shall appear with his apprentice before the superior court of the proper county, and if the court be satisfied that the master has done justice to the said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person.

COMMISSIONERS' NOTE: All of Title IV has been repealed by an act of the Legislature approved April 3, 1876, and amendments thereto approved April 9, 1880 (see Stats. of 1875–76, 842; 1880, 28), except as to some parts which are identical in terms with the said act and amendments thereto. The said act and amendments thereto have been incorporated into sections and given a place under this title, and the old sections, 274 and 275, have been omitted, and their repeal is recommended. By comparing the foregoing statutes with this report, it will be observed that certain changes have been made in the acts referred to; they are such, however, as the Commissioners believe, will commend themselves to the legislature, and should be embraced in the code.

Chapter, provisions of, to what extended.

SEC. 281. The provisions of this chapter are hereby extended to any orphan, foundling, or abandoned child, of proper age, which may be now, or hereafter, an inmate of any orphan, or foundling asylum in this state, and any such child or any half-orphan which may be, now or hereafter, under the care, control, and support of any such asylum, whose surviving parent or guardian shall neglect or refuse, for the period of six months, to pay such sum of money for its support as may have been stipulated and agreed upon between said parent or guardian and the managers of said asylum, may, with the consent of such managers and of his or her own free will, be bound out and apprenticed as provided in this chapter.

COMMISSIONERS' NOTE: This section is taken from the act of 1860 (p. 37), and an act supplemental thereto of 1869-70 (p. 334), with reference to this class of children. The repeal of the following acts is hereby recommended: Act of 1858, p. 134; of 1860, p. 37; of 1869–70, p. 334; of 1875–6, p. 842; of 1880, p. 28.

PART IV.

CORPORATIONS.

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TITLE I.

GENERAL PROVISIONS AS TO ALL CORPORATIONS.

CHAPTER I.

FORMATION OF CORPORATIONS.

ARTICLE I. CORPORATIONS DEFINED AND HOW ORGANIZED. [Sec. 283, *et seq.*]
II. BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS. [Sec. 301, *et seq.*]

ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

Section 283. Corporation defined.
284. Corporation, public and private, distinguished.
285. Corporations, private, how formed.
286. Corporations, private, may be formed for any lawful purpose.
287. Corporations may, prior to January 1, 1901, continue under this code, how.
288. Corporations existing January 1, 1873, governed by provisions of this code, except as to formation.
289. Name of instrument creating corporation.
290. Articles of incorporation, what to contain.
291. Same, for certain corporations, what further to contain.
292. Same, how and by whom signed.
293. Certain corporations, pre-requisites to filing articles of.
294. Same.
295. Oath of officer to subscription of stock and payment of ten per centum thereon.
296. Articles of incorporation to be filed, where. Term of existence.
297. Certified copies of, evidence of what.
298. Members and stockholders defined.
299. Penalties prescribed for failure to file articles of incorporation.

Corporation defined.

SEC. 283. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

Corporations, public and private, distinguished.

SEC. 284. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

Corporations, private, how formed.

SEC. 285. Private corporations may be formed by the voluntary association of any five or more persons in the manner prescribed in this article. A majority of such persons must be residents of this state.

Corporations, private, may be formed for any lawful purpose.

SEC. 286. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

Corporations may, prior to January 1, 1901, continue under this code, how.

SEC. 287. Any corporation existing on the first day of January, eighteen hundred and seventy-three, formed under the laws of this state, and still existing, which has not already elected to continue its existence under the provisions of this code, applicable thereto, if for any reason it shall be deemed advisable, subject to the provisions of section two hundred and eighty-eight, on or before January first, nineteen hundred and one, may make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by the unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of state.

COMMISSIONERS' NOTE: The prefix "in" has been added to the word "corporation" where it occurs the second time in the section. The words "may at any time hereafter" after the word "thereto" in the present section, have been omitted, and in lieu thereof the following have been substituted: "if for any reason it shall be deemed advisable, subject to the provisions of section 288, on or before January 1, 1901, may." The reason for the first amendment is apparent. For the remaining changes, see note to section 288, *post*.

Corporations existing January 1, 1873, governed by provisions of this code, except as to formation.

SEC. 288. All corporations, whether formed under the provisions of this code or not, shall be governed by the provisions thereof and such laws as may hereafter be enacted relating thereto; *provided*, that the laws under which any of such corporations were formed or exist, enacted prior to the first day of January, eighteen hundred and seventy-three, are continued in force and are applicable to such corporations, so far

as the same relate to the formation and existence thereof, and not otherwise; and all such laws are repealed subject only to the provisions of this section.

COMMISSIONERS' NOTE: On January 1, 1873, when the codes took effect, certain corporations existed theretofore, organized in conformity with various acts of the legislature, which, in the absence of any further legislation relating to them, would have been governed as to their formation, existence, character, powers, duties, obligations, and liabilities, by the laws by and under which they were created—while certain other corporations thereafter formed, even though they were created for the same purpose, would be governed and controlled by the provisions of the code. Thus it resulted that corporations now exist in this state created for the same object, which are subject to two distinct bodies of the law, dependent upon the time of their creation, unless section 288 of the Civil Code makes them all amenable to the provisions of the code, except as to their formation and existence.

The construction given to said section 288 by the supreme court has not been uniform; and, as the matter now stands, it would be difficult to determine which body of the law governs corporations created under laws passed previous to the adoption of the codes.

In *The Estate of Eastman*, 60 Cal. 308, it is held by the supreme court that, under section 288, the provisions of the act of April 22, 1850, under which the "St. John's Episcopal Church of Stockton" was organized as a corporation, were continued in force as to such corporation.

This was followed in the case of *Robinson* vs. *Southern Pacific Co.*, 105 Cal. 526, wherein it was intimated, although not definitely decided, that corporations formed and existing prior to the adoption of the codes are not affected by the provisions thereof, unless such corporations shall have elected to continue their existence under the same (p. 549 *et seq*).

But in *Market St. Ry. Co.* vs. *Hellman*, 109 Cal. 571 (p. 579 *et seq.*), the court takes a different view of the matter, and holds explicitly that under section 288 corporations existing at the time said section was enacted were relieved "only from such provisions as were saved to them from existing laws, viz.: those relating to their *formation* and existence." * * *

And the court says in its opinion: "Part IV of Division I of the Civil Code contains a comprehensive system for the organization, existence, and duration of corporations; divides them into classes; defines their powers and duties; regulates the mode in which those powers are to be exercised and in which their duties are to be discharged. *In all these matters relating to future conduct no reason is observed why existing corporations should not be governed by the same laws as those formed subsequently to the adoption of the codes and for like purposes.*

"To say that they shall not be is to select from the mass of entities known as corporations a class to which legislative action does not apply, thus constituting partial and special legislation applying only to certain units in the class, to the exclusion of others of the same class. This would amount to an arbitrary discrimination between persons standing in the same relation to the subjects of legislation, which is not permissible."

The case of *Market St. Ry. Co.* vs. *Hellman* is cited as authority and followed in the case of *McGowan* vs. *McDonald*, 111 Cal. 57 (pp. 65–66), where it is held that a banking corporation organized under the law of 1862 is subject, as respects the liability of its stockholders, to the provisions of the Constitution of 1879, and also to the provisions of the Civil Code on that subject, although such corporation did *not* elect to continue its existence under the code.

If the matter had rested here there would be no occasion for any change in section 288 of the Civil Code, for under the construction given said section in the two last preceding cases, all corporations which were formed and ex-

isted prior to the adoption of the codes were subject to the provisions of the code except alone as to their *formation* and *existence*. But in the still later case of *Murphy* vs. *Pacific Bank*, 119 Cal. 334 (p. 341 *et seq.*) the supreme court returns to the doctrine enunciated in the earlier cases, and holds that section 288 means that corporations which do not elect to continue their existence under the codes, as provided in section 287 of the Civil Code, are not affected by the provisions of Part IV of Division 1 of the Civil Code.

In view of the uncertainty manifested by the decisions cited, the Commission submits the amendments proposed to sections 287 and 288. If adopted it will still be optional with corporations formed and existing prior to January 1, 1873, if for any reason it shall be deemed advisable to elect to continue their existence under the provisions of the Civil Code applicable thereto, provided they elect to do so previous to January 1, 1901, after which date section 287, as now reported, will become inoperative. The Commission would have preferred, owing to the changes recommended, resulting from a careful consideration of the decisions of our supreme court, and what appears to have been contemplated by the framers of the Constitution of 1879 (Sec. 1, Art. XII), which followed on this question the Constitution of 1849, to have suggested the repeal of section 287; but, out of abundance of caution and to meet all possible contingencies, this section is retained for a limited period, to enable all such corporations to come under the provisions of the code in the manner now prescribed.

But whether they do so, or not, if said sections as proposed are enacted into law as part of the Civil Code, all such corporations are thereafter subject to the provisions thereof, *excepting* only as to their *formation* and *existence*. By such enactment, all laws under which they are created being repealed, subject to the provisions of section 288, the result would be that, as to the character, powers, duties, obligations, and liabilities of all corporations, we should have to consult the code alone and laws hereafter enacted, instead of remaining in a condition of hazardous uncertainty as to whether we should look to the code, or to an old statute, general or special, under which such corporations may have been organized, for the law governing their various functions.

Name of instrument creating corporation.

SEC. 289. The instrument by which a private corporation is formed is called "articles of incorporation."

Articles of incorporation, what to contain.

SEC. 290. Articles of incorporation must be prepared, setting forth:

1. The name of the incorporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding fifty years.
5. The number of its directors or trustees, which shall not be less than five nor more than eleven, and the names and residence of those who are appointed for the first year; *provided*, that the corporate powers, business, and property of corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for

other purposes, may be conducted, exercised, and controlled by a board of not less than five nor more than fifty directors, to be chosen from among the stockholders of such corporation, or from among the members of such order or organization; *and provided also*, that at any time during the existence of corporations for profit, other than those of the character last hereinabove provided for, the number of the directors may be increased or diminished, by a majority of the stockholders of the corporation, to any number not exceeding eleven nor less than five, who must be members of the corporation; whereupon a certificate, stating the number of directors, must be filed, as provided for in section 296 for the filing of the original articles of incorporation; *and provided also*, that the corporate powers, business, and property of corporations formed, or to be formed, for social purposes, and not directly for profit, may be exercised, conducted, and controlled by a board, consisting of such number of directors as may be in the constitution or by-laws provided; and corporations so formed may, in their constitution or by-laws, provide for the length of time that the directors, or any number thereof, shall act, and may, in like manner, provide that certain directors, or a certain number of the board of directors to be selected by the corporation or the board of directors, in the mode and manner provided in the constitution or by-laws, shall act for any specified length of time, or otherwise, as shall be in the constitution or by-laws set forth.

6. The amount of its capital stock, if any, and the number of shares into which it is divided.

7. If there is a capital stock, the amount actually subscribed, and by whom.

COMMISSIONERS' NOTE: Words "if any" added in subdivision 6.

Same, for certain corporations, what further to contain.

SEC. 291. The articles of incorporation of any railroad, wagon road, telegraph, or telephone organization, must also state:

1. The kind of road, telegraph, or telephone intended to be constructed;

2. The place from and to which it is intended to be run, and all the intermediate branches;

3. The estimated length of the road, telegraph or telephone line;

4. That at least ten per cent of the capital stock subscribed has been paid in to the treasurer of the intended corporation.

COMMISSIONERS' NOTE: The words "or telephone" inserted to meet conditions now existing caused by the inauguration and growth of telephone companies.

Same, how and by whom signed.

SEC. 292. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

Certain corporations, prerequisites to filing articles of.

SEC. 293. Each intended corporation named in section 291, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit:

1. One thousand dollars per mile of railroads;

2. One hundred dollars per mile of telegraph or telephone lines;

3. Three hundred dollars per mile of wagon roads.

COMMISSIONERS' NOTE: The words "or telephone" inserted, for reasons given in note to section 291, *ante*.

Same.

SEC. 294. Before the articles of incorporation of any corporation referred to in the preceding section are filed, there must be paid, for the benefit of the corporation, to the treasurer elected by the subscribers, ten per cent of the amount subscribed.

Oath of officer to subscription of stock and payment of ten per centum thereon.

SEC. 295. Before the secretary of state issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent thereof actually paid to a treasurer for the benefit of the corporation.

Articles of incorporation to be filed, where. Term of existence.

SEC. 296. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of state, and the affidavit mentioned in the last section, where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons

signing the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the certificate, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or in this code otherwise specially provided.

Same, certified copy of, evidence of what.

SEC. 297. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, or by the county clerk of the county where the original articles shall have been filed, or a copy of a certified copy thereof duly certified by any county clerk of a county where said certified copy is filed, must be received in all the courts of this state, and other places, as prima facie evidence of the facts therein stated.

COMMISSIONERS' NOTE: The amendment providing "for a copy of a certified copy," etc., is inserted to enable parties to secure evidence of incorporation in any county where a copy of the articles of incorporation may have been filed.

Members and stockholders defined.

SEC. 298. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

Penalties prescribed for failure to file articles of incorporation.

SEC. 299. No corporation hereafter formed shall purchase, locate, or hold property in any county in this state, except in the county where its original articles of incorporation are filed, without filing in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made, a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state. Every corporation must file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquire any property in any county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks and certified copies thereof shall have the same force and effect in evidence as would the originals. Any corporation failing to comply

with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation shall be filed at the places directed in this article; *provided*, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; *and provided further*, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same.

COMMISSIONERS' NOTE: The first amendment consists in inserting in the first sentence the exception as to the county where the original articles of incorporation are filed, thus obviating the necessity of filing a copy of the copy thereof with the clerk of such county. The second amendment strikes out the provision requiring corporations to file certified copies within ninety days after the enactment of the amendment to this section of April 23, 1880 (Amendments 1880, 13), which by lapse of time is rendered unnecessary. The words "by the general law and this section" have been substituted by the words "in this article." The remaining change transposes clauses in the beginning of the section.

SEC. 300. *Omitted.*

COMMISSIONERS' NOTE: Section 300, referring to banking corporations, is transferred to Title XIX*a*, Chapter I, on banking corporations, and renumbered section 567*a*.

ARTICLE II.

BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS.

Section 301. Adoption of by-laws, when, how, and by whom.
302. Directors, election of, etc.
303. By-laws may provide for what Publication of certain notices, etc.
304. By-laws, recording and amendment of.
305. Corporations, how governed. Number of and who may be directors. Quorum required to do business. Vacancies.
307. Directors, election of, how conducted.
308. Directors, organization of.
309. Dividends to be declared from surplus profits only. Liabilities of directors.
310. Directors, removal from office of.
311. Justice of the peace may issue call for meeting in certain cases.
312. Majority of stock must be represented at all elections.
313. Executors and guardians may represent stock.
314. Elections may be postponed. Stockholders may call meetings, when.
315. Complaints regarding elections, when and how heard.
316. Liability of officers for false reports, etc.
317. Meeting, by written consent without notice, valid.
319. Meetings, where held.
320. Special meetings, how called.
321. Corporation may change place of business, proceedings on.

Adoption of by-laws, when, how, and by whom.

SEC. 301. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county n which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

Directors, election of, etc.

SEC. 302. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in section 301.

By-laws may provide for what. Publication of certain notices, etc.

SEC. 303. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors;

2. The number of stockholders or members constituting a quorum;

3. The mode of voting by proxy;

4. The qualifications and duties of directors, the time of their annual election, and the mode and manner of giving notice thereof;

5. The compensation and duties of officers;

6. The manner of election and the tenure of office of all officers other than the directors;

7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense;

8. The issuance of certificates for stock prior to full payment,

under such restrictions and for such purposes as may be proper, and the disposition of the stock of the corporation which may be purchased by it at sales to pay delinquent assessments;

9. The newspaper in which shall be published all notices of the meetings of stockholders, or board of directors, notice of which is required to be published, which must be some newspaper published in the county where the principal place of business of the corporation is located, or if none is published therein, then a newspaper published in an adjoining county; *provided*, that when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause, at the time any publication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county.

COMMISSIONERS' NOTE: Subdivision 9 of the amendment as proposed by the Commission of 1895 (p. 55, Report of Commission of 1895), numbering it as subdivision 8 of the section as reported, and giving the present subdivision 8 therein the number 9. This change is proposed for the reason that it brings within one section all of the different matters which may ordinarily be provided for in the by-laws of a corporation. The last subdivision has been corrected so as to express its intent. The word "and" at end of subdivision 6 is omitted, as unnecessary.

By-laws, recording and amendment of.

SEC. 304. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and no by-law shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two thirds of the subscribed stock, or by two thirds of the members. The written assent of the holders of two thirds of the stock, or two thirds of the members if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stock-

holders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, shall be stated in said book, and until so stated the repeal shall not take effect.

Corporations, how governed. Number of and who may be directors. Quorum required to do business. Vacancies.

SEC. 305. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than five nor more than eleven directors, to be elected from among the holders of stock, or, where there is no capital stock, then from the members of such corporations; except that corporations formed, or to be formed, for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges, or societies, of any benevolent or charitable order or organization, and in connection therewith, the leasing of stores and offices in such building or buildings, for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board of not less than five nor more than fifty directors, to be chosen from among the stockholders of such corporation, or from among the members of such order or organization. A majority of the directors must be, in all cases, citizens of this state. Directors of corporations for profit must be holders of stock therein, in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid, as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

SEC. 306. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 10, 1889 (Stats. 1889, 365), this section was repealed, and for that reason has been omitted.

Directors, election of, how conducted.

SEC. 307. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section 312, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes

as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case, the directors receiving the highest number of votes shall be declared elected. The provisions of this section, so far as it relates to cumulative voting, shall not apply to literary, religious, scientific, social, or benevolent societies, unless it shall be so provided in their by-laws or rules.

COMMISSIONERS' NOTE: The words "of this code" of present section, omitted.

Directors, organization of.

SEC. 308. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

Dividends to be declared from surplus profits only. Liabilities of directors.

SEC. 309. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they create debts beyond their subscribed capital stock; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, except as hereinafter provided, nor reduce or increase the capital stock, except as herein specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are liable by this section; *provided, however*, that where a corporation has been heretofore or

may hereafter be formed for the purpose, among other things, of acquiring, holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two thirds of the capital stock thereof, given at a meeting called for that purpose, divide among the stockholders the land, water, or water rights so by such corporation held, in the proportions to which their holdings of such stock at the time of such division would entitle them. All conveyances made by the corporation in pursuance of this section shall be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein shall prohibit a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence.

COMMISSIONERS' NOTE: The words "nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock," where they first appear in present section, are omitted as superfluous, the same appearing again in the section.

Directors, removal from office of.

SEC. 310. No director shall be removed from office, unless by a vote of two thirds of the members, or of stockholders holding two thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 301, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

COMMISSIONERS' NOTE: The words "of this title" omitted after the reference to section 301.

Justice of the peace may issue call for meeting in certain cases.

SEC. 311. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation

is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

Majority of stock must be represented at all elections.

SEC. 312. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representative, must be a member thereof or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholders or members, and may be set aside by petition to the superior court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had—such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

COMMISSIONERS' NOTE: The title of the court changed to superior court, to comply with constitution.

Executors and guardians, may represent stock.

SEC. 313. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator.

Elections may be postponed. Stockholders may call meetings, when.

SEC. 314. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section 310.

COMMISSIONERS' NOTE: The words "of this article" omitted after the reference to section 310.

Complaints regarding elections, when and how heard.

SEC. 315. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the superior court of the county, or city and county in which such election is held, must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party or those to be affected thereby.

COMMISSIONERS' NOTE: Title of court changed to comply with the constitution. The words "county or city and county" substituted for "district."

Liability of officers for false reports, etc.

SEC. 316. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

Meeting, by written consent, without notice, valid.

SEC. 317. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. The stockholders or members of such corporation, when so assembled, may elect officers, fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

COMMISSIONERS' NOTE: Sections 317 and 318, as proposed by the Commission of 1895, have been united.

SEC. 318. *Omitted.*

COMMISSIONERS' NOTE: The repeal of this section is recommended, its provisions having been incorporated in section 317, *ante*.

Meetings, where held.

SEC. 319. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

Special meetings, how called.

SEC. 320. When no provision is made in the by-laws for regular meetings of the directors, and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

Corporations may change place of business, proceedings on.

SEC. 321. Any corporation that has been or may be created under the laws of this state may change its principal place of business from one place to another in the same county, or from one county, city, city and county, or town, to another county, city, city and county, or town, within this state. Before such change is made the consent, in writing, of the holders of two thirds of the capital stock, or a majority of the members if there be no capital stock, must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal, or change, must be published at least once a week, for three successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein (if not, in a newspaper published in an adjoining county), giving the name of the county, or city, where it is situated, and that to which it is intended to remove it. When the publication of such notice has been completed, the directors of the corporation must file in the offices of the clerks of the counties from and to which such change has been made, and in the office of the secretary of state, certified copies of the written consent of the stockholders to such change, and of the notice of such change, and proof of publication thereof, also a certificate that the proposed removal has taken place; and thereafter the principal place of business of the corporation is at the place to which it is removed.

COMMISSIONERS' NOTE: The present section 321, having reference to banking matters exclusively, has been transferred to proposed Title XIX*a*, Chapter I, on Banking Corporations, and renumbered section 567*a*.

The present section 321*a*, amended, has been put in its place under this article and numbered 321. To it has been added, in an amended form, to complete the subject in its proper place, present section 585.

The words "place to another in the same county, or from one city or county to another city or county" in the present section 321*a* are omitted, and the words "place to another in the same county or from one county, city, city and county, or town to another city, city and county, or town," inserted in lieu thereof.

The words "or a majority of the members if there be no capital stock" are inserted after the words "capital stock," to harmonize this section with the remainder of this title.

The words "published in" are inserted after the word "newspaper" where it occurs the second time, to fully express what is intended.

That portion of the section as reported commencing with the words "when the publication of such notice," etc., is taken substantially from present section 585.

The former section 584, applicable to mining corporations alone, was repealed April 3, 1876 (Am. 1875-76, 73), and on the same day substantially re-enacted as section 321*a*, already herein referred to, but made general in its effect. The result of said repeal, and re-enactment, was to divide the subject, as the section providing how a corporation should proceed to effect a change of its principal place of business was thus made applicable to all corporations, while the section providing for publication of notice of such intended change, remaining in the chapter on mining corporations, affected only such corporations.

United, as above stated in this chapter, provision is fully made for all corporations.

CHAPTER II.

CORPORATE STOCK.

ARTICLE I.

STOCK AND STOCKHOLDERS.

Section 322. Individual liability of stockholders, released, when.
323. Certificates of stock, when issued.
324. Shares, transfer of.
325. Transfer of shares held by married women. Dividends, payable how and to whom.
326. Shares of non-resident stockholders, bond required on transfer, when.
327. Directors, contract to relieve from constitutional liability, void.

Individual liability of stockholders, released, when.

SEC. 322. Each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it shall be dismissed, as to him, upon his paying the costs, or

such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, shall not be liable under the provisions of this section, by reason of any such investment; nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder, as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability, as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this state.

Certificates of stock, when issued.

SEC. 323. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and must issue such certificates prior to full payment

under such restrictions and for such purposes as their by-laws may provide.

COMMISSIONERS' NOTE: The amendment to this section is made to make it harmonize with an amendment to section 303, to the effect that by-laws may provide under what circumstances certificates may be issued for stock, when not fully paid up.

Shares, transfer of.

SEC. 324. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock, except as hereinafter provided, are personal property, and may be transferred by indorsement by the signature of the proprietor, his agent, attorney, or legal representative, and the delivery of the certificate; but such transfer is not valid, except as to the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of transfer; *provided, however*, that any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use, may in its by-laws provide that water shall only be so sold, distributed, supplied, or delivered to owners of its capital stock, and that such stock shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate shall be so issued, and a certified copy of such by-law recorded in the office of the county recorder in the county where such lands are situated, the shares of stock so located on any land shall only be transferred with said lands, and shall pass as an appurtenance thereto.

Transfer of shares held by married women. Dividends payable, how and to whom.

SEC. 325. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a *femme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman, touching any shares of stock of any corporation owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

Shares of non-resident stockholders. Bond required on transfer, when.

SEC. 326. When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or, if not so satisfactory, then one approved by a judge of the superior court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

Directors, contract to relieve from constitutional liability, void.

SEC. 327. Any contract or contracts, verbal or written, hereafter made, whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint-stock association from any liability imposed by section 3 of Article XII of the constitution of California, are hereby declared to be, and shall be, null and void.

ARTICLE II.

ASSESSMENTS OF STOCK.

Section 331. Assessments, levy of.
332. Same, amount of.
333. Same, when can be levied.
334. Same, order levying, what shall contain.
335. Same, notice of.
336. Notice, service and publication of.
337. Delinquent notice, form of.
338. Same, contents of.
339. Same, publication of.
340. Jurisdiction to sell stock, how acquired.
341. Sale to be by public auction.
342. Highest bidder for smallest number of shares the purchaser.
343. Corporation may purchase, when. No assessments or dividends thereon, when.
344. Stock purchased by corporation, disposition of remainder sufficient for what purposes.
345. Delinquent sale, time of; extended, how and when.

Section 346. Assessments, invalid, when.
347. Action for recovery of stock, and limitation thereof.
348. Publication of notice, how proved.
349. Sale waiver of. Action to recover assessment.

Assessments, levy of.

SEC. 331. The directors of any corporation formed or existing under the laws of this state, after one fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent provided herein.

Same, amount of.

SEC. 332. No one assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities, or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided;

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

Same, when can be levied.

SEC. 333. No assessment must be levied while any portion of a previous one remains unpaid; unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second, or third subdivisions of section 332.

Same, order levying, what shall contain.

SEC. 334. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assess-

ment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

Same, notice of.

SEC. 335. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

Notice, service, and publication of.

SEC. 336. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

Notice, delinquent, form of.

SEC. 337. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for

declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, if in existence, and, if not, in other papers meeting the requirements prescribed by the preceding section, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors, made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

COMMISSIONERS' NOTE: The words "if in existence, and, if not, in other papers meeting the requirements prescribed by the preceding section," inserted to provide for publication in other papers in case those in which the assessment notice was published have suspended publication.

Same, contents of.

SEC. 338. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

Same, publication of.

SEC. 339. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

Jurisdiction to sell stock, how acquired.

SEC. 340. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of

the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

Sale to be by public auction.

SEC. 341. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

Highest bidder for smallest number of shares the purchaser.

SEC. 342. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

Corporation may purchase, when. No assessments or dividends thereon, when.

SEC. 343. If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

Stock, purchased by corporation, disposition of. Remainder sufficient for what purposes.

SEC. 344. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corpora-

tion or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Delinquent sale, time of, extended how and when.

SEC. 345. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Assessments, invalid, when.

SEC. 346. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

Action for recovery of stock and limitation thereof.

SEC. 347. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

Publication of notice, how proved.

SEC. 348. The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for

what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates, signed by the secretary, and under the seal of the corporation, are prima facie evidence of the contents thereof.

Sale, waiver of. Action to recover assessment.

SEC. 349. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

CHAPTER III.

CORPORATE POWERS.

ARTICLE I. GENERAL POWERS. [354 *et seq.*]
II. RECORDS. [377 *et seq.*]
III. EXAMINATION OF CORPORATION. [382 *et seq.*]
IV. JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY. [388 *et seq.*]

ARTICLE I.

GENERAL POWERS.

Section 354. Corporations, powers of.
355. Limitation of powers of.
356. Issue of bills, etc., for circulation as money prohibited.
357. Corporation, misnomer of in any instrument does not invalidate, when.
358. Corporation to organize within one year.
358*a*. Foreign corporations, companies, and associations to file certificates, etc.
358*b*. Service of process on same.
358*c*. Penalty.
359. Stocks or bonds, issuing to increase or diminish capital stock or bonded indebtedness.
360. Corporation, may acquire real property, under what limitations and how.
362. Same; amendment of articles of incorporation, proceedings on and effect of.
363. Articles of incorporation, correction of erroneous filing of.

Corporations, powers of.

SEC. 354. Every corporation, as such, has power:

1. Of succession by its corporate name, for the period limited; and when no period is limited perpetually;

2. To sue and be sued, in any court;

3. To make and use a common seal, and alter the same at pleasure;

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this part;

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock;

7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

Same; limitation of powers of.

SEC. 355. In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this part under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

Issue of bills, etc., for circulation as money, prohibited.

SEC. 356. No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money.

Corporation, misnomer of in any instrument does not invalidate, when.

SEC. 357. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

Corporations to organize within one year.

SEC. 358. If a corporation does not organize and commence the transaction of its business, or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such *de facto* corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney-general.

Foreign corporations, companies, and associations to file certificates, etc.

SEC. 358*a*. Every corporation, company, or association, organized or created by the laws of any other state or country, before it shall transact any business in this state, and as a condition precedent thereto, shall file in the office of the secretary of state, and in the clerk's office of the county in this state wherein its principal place of business is located, and in each county in this state before doing business therein, a certificate in writing, duly executed by such corporation, company, or association, under the seal thereof, which certificate shall set forth:

1. The name of such corporation, company, or association;

2. The purpose for which it is formed;

3. The state or country where it was incorporated or organized, and its principal place of business therein;

4. The term of its existence.

5. The names and residence of the officers thereof at the time of filing such certificate;

6. The amount of capital stock, and the number of shares into which it has been divided;

7. If there is a capital stock, the amount actually subscribed, and by whom, and the amount thereof paid up;

8. The amount and value of the assets of such corporation, company, or association, and of what the same consists;

9. The liabilities of such corporation, company, or association, and if any of its indebtedness is secured, how secured, and upon what property;

10. The place where its principal business is to be transacted in this state, and the location of the office therein;

11. The name of some person residing, and his place of residence, in this state, upon whom summons and complaint and other process may be served in all actions, or other legal proceedings against such corporation, company, or association, and in all auxiliary proceedings, such as garnishment and the like, and reciting that process when served upon him in this state as prescribed by law, shall be a valid and effectual service thereof upon such corporation, company, or association. All process so served gives jurisdiction over the corporation, company, or association. The agent so appointed and designated shall be deemed a general agent, and must be the principal agent, or chief manager of the business of such corporation, company, or association, in this state. Any such foreign corporation, company, or association shall, as a further condition precedent to the transaction of any business in this state, and

in consideration of the privilege to transact such business in this state, make and file with the secretary of state an agreement or stipulation duly executed by such corporation, company, or association, in form and substance as follows:

"The (giving name of corporation, company, or association), does hereby stipulate and agree that in consideration of the permission granted by the state of California to it to transact business in this state, that if at any time said corporation, company, or association shall be without an agent in said state on whom summons and complaint or other legal process may be served, service of such summons and complaint or other legal process may be made upon the secretary of state, such service to have the same force and effect as if made upon said corporation, company, or association."

Whenever such service of summons and complaint or other legal process shall be made upon the secretary of state, he must, within ten days thereafter, transmit by mail, postage prepaid, a copy of such summons and complaint or other legal process to the corporation, company, or association, addressed to the president or secretary thereof at its home, or principal office, if known to him. Such copy must be certified by the secretary of state, under his hand and official seal, but a sending of such copy by the secretary of state shall not be a necessary part of the service of summons and complaint or other legal process. Where process is served upon the secretary of state as herein provided, said corporation, company, or association so served shall have sixty days from the date of such service to appear and answer to said action or proceeding. Any such corporation, company, or association doing business in this state at the time this article takes effect, shall file the certificate above mentioned within thirty days thereafter; and in case of the death, removal, or change of the person so designated in such certificate as the representative of such corporation, company, or asssociation, upon whom summons and complaint or other process may be served, or in case of the change of the principal place of business of such corporation, company, or association in this state, notice in writing of such death, removal, or change shall be filed in the office of the secretary of state of this state, and in the office of the county clerk of the county where its principal place of business in this state is located, within ten days of such death, removal, or change, and the name of some other competent person shall be specified in such notice in lieu of the one deceased, or removed, upon whom summons and complaint or other process may be

served, as the representative of such corporation, company, or association.

Service of process on same.

SEC. 358*b*. Service of summons and complaint or other process upon the person designated in the certificate or notice mentioned in section 358*a*, shall be made in the same manner as prescribed by law in case of service upon any other person, and such service, when made, shall be a valid and effectual service upon the corporation, company, or association designating him as its agent or representative in this state; and in case of the failure of any foreign corporation, company, or association to comply with the provisions of the preceding section, or in case the person named as the agent or representative thereof upon whom process may be served, shall absent himself from the state, or conceal himself, or in any manner become disqualified from accepting service of process, or being served therewith, or in case of the failure of any such corporation, company, or association to file with the secretary of state the agreement or stipulation mentioned in said section, valid service of summons and complaints or other process may be made upon such corporation, company, or association by service thereof upon the secretary of state of the state of California.

Penalty.

SEC. 358*c*. Any corporation, company, or association violating any of the provisions of section 358*a* or 358*b*, or any person or persons transacting or attempting to transact any business in this state for or on behalf of such corporation, company, or association, in violation of any of the provisions of said sections, shall be guilty of a misdemeanor.

COMMISSIONERS' NOTE: Sections 358*a*, 358*b*, and 358*c* are recommended in lieu of an act of the Legistature, approved April 4, 1870 (Stats. 1869–70, 881), and an act approved April 1, 1872 (Stats. 1871–72, 826), relating to foreign corporations. Neither of the acts referred to provides for service of process upon a foreign corporation except (1) where an agent therefor has been designated by such corporation upon whom process may be served, or (2) where no such agent has been designated, then it may be made only upon some person in his county acting as agent of such corporation, or doing business for it. In the sections here recommended it is provided where no agent is designated by a foreign corporation upon whom service may be made, such service may be made upon the secretary of state, thus following the lead of other states in this respect, and also of our own state relative to foreign insurance corporations. (Sec. 616, Political Code.)

Such regulations have been upheld by the federal and state courts, and the Commission believe them to be just and fair, alike to the people of the state

and to foreign corporations, companies, and associations doing business therein.

Sec. 14, of Art. XII, Constitution of 1879;
Chattanooga R. & C. R. Co. vs. *Evans*, 66 Fed. Rep. 809;
Bank vs. *Earle*, 13 Pet. 519;
Insurance Co. vs. *French*, 18 How. 404;
Paul vs. *Virginia*, 8 Wall. 168;
Fritts vs. *Palmer*, 132 U. S. 282;
Hooper vs. *California*, 155 U. S. 648;
Allgeyer vs. *Louisiana*, 165 U. S. 578;
Bank of British N. A. vs. *Madison*, 99 Cal. 125.

Stock or bonds, issuing to increase or diminish capital stock or bonded indebtedness.

SEC. 359. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness is void. Every corporation may increase or diminish its capital stock, create or increase its bonded indebtedness, subject to the following provisions:

1. The capital stock of a corporation may be increased or diminished at a meeting of the stockholders by a vote representing at least two thirds of the subscribed capital stock; such meetings must be called by the board of directors, and notice must be given by publication in a newspaper published in the county where the principal place of business of such corporation is located, or if there be none published in said county, then in a newspaper published in an adjoining county, such paper to be designated by the board of directors in the order calling the meeting.

2. The notice must specify the object of the meeting, and the amount to which it is proposed to increase or diminish the capital stock, the time and place of holding the meeting, which latter must be at the principal place of business of the corporation, and at the building where the board of directors usually meet. The notice herein provided must be published once a week for at least sixty days. The capital stock cannot be diminished to an amount less than the indebtedness of the corporation.

3. The bonded indebtedness of a corporation may be created or increased by a vote of the stockholders representing at least two thirds of the subscribed capital stock at a meeting called by the board of directors, and after notice of the time and place of the meeting, published in the same manner and for the time above prescribed, which notice shall state the amount of the bonded indebtedness which it is proposed to create, or the amount to which it is proposed to increase such indebted-

ness, and shall in all other respects contain the same matters as are above provided and set forth in the notice of a meeting to increase or diminish the capital stock.

4. In addition to the notice by publication, the secretary of the corporation shall also address a notice to each of the stockholders whose names appear on the company's books as sufficiently addressed, at his place of residence if known, and if not known, then at the principal place of business of the corporation, which notice shall be mailed to such stockholder at least thirty days before the day appointed for such meeting.

And upon such increase or diminution of the capital stock or creation or increase of bonded indebtedness being made as herein provided, a certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, or the amount of the bonded indebtedness created or to which the bonded indebtedness may have been increased, and the amount of stock represented at the meeting, and the whole vote by which the object was accomplished. The certificate must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof in the office of the secretary of state; and thereupon the capital stock shall be so increased or diminished, or the bonded indebtedness may be created or increased accordingly. When the by-laws of the corporation prescribe the paper in which the notices of meeting are to be published, the notices herein provided for shall be published in such paper unless publication thereof shall have ceased.

Corporations may acquire real property, under what limitations and how.

SEC. 360. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in Title VII, Part III, Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title. By a unanimous vote of all the directors at any regular meeting, any corporation existing or hereafter to be formed under the laws of this state may acquire and hold the lots and buildings on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business.

COMMISSIONERS' NOTE: By the Statutes of 1889, pages 67 and 363, respectively, two new sections were added to the Civil Code, both of which were

numbered 363. The one added by act approved March 5, 1889, to be found on page 67, Stats. 1889, has been added to section 360, as an amendment; thus leaving but one section numbered 363. The act of 1875–76, p. 653, having the same object as the section hereby added to section 360, but conferring authority on members or stockholders of the corporation to acquire lot, etc., is recommended for appeal.

SEC. 361. *Omitted.*

COMMISSIONERS' NOTE: Section 361, referring solely to mining corporations, has been transferred to Title XI on mining corporations, and numbered 587*b*.

Amendment of articles of incorporation.

SEC. 362. Any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees, and by a vote or written assent of the stockholders representing at least two thirds of the subscribed capital stock of such corporation, or the written assent of a majority of the members if there be no capital stock; and a copy of such articles of incorporation as thus amended, duly certified to be correct by the president and secretary of the board of directors or trustees of such corporation, shall be filed in the office or offices where the original and certified copies of articles of incorporation are required by this code to be filed; and from the time of so filing such copy of amended articles of incorporation, such corporation shall have the same powers, and it and the stockholders or members thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation; *provided*, that the time of the existence of such corporation shall not be by such amendment extended beyond the time fixed in the original articles of incorporation; *provided further*, that such original and amended articles of incorporation shall together contain all the matters and things required by the law under which the original articles of incorporation were executed and filed; *and provided further*, that nothing contained in this section shall be construed to cure or amend any defect existing in any original articles of incorporation heretofore filed in that such articles did not set forth the matters required to make the same valid at the time of filing; *and also provided*, that if the assent of two thirds of said stockholders, or of the majority of members where there is no capital stock, to such amendment has not been obtained, that a notice of the intention to make such amendment shall first be published in some newspaper published in the county in which the principal place of business of the corporation is located, for fifteen days if in a daily, or five successive issues if in a weekly newspaper, before the filing of the proposed amendment; *and also provided further*, that

nothing contained in this section shall be construed to authorize any corporation to diminish its capital stock.

COMMISSIONERS' NOTE: A large number of the proposed amendments to this section were taken from the report of the Commissioners of 1895 (see page 59). We cite therefrom: "The present section provides that any corporation may amend its articles of association or certificate of incorporation, but as a matter of law and fact no corporation has any articles of association, and if there be such a thing as a certificate of incorporation, it is obviously something which the corporation has no power to amend. Section 289 mentions the only instrument by which a private corporation can be formed, and it is called 'articles of incorporation.' If there is any paper which may properly be styled a certificate of incorporation it is that certificate mentioned in section 296, which the secretary of state is required to issue. This certificate obviously cannot be amended by the corporation because it is not its act, and section 362 surely did not contemplate that upon the amendment of its articles of incorporation a new and amended certificate should be issued by the secretary of state. Again, the section provides that 'a copy of the said articles of association, or certificate of incorporation, as thus amended, shall be filed in the office or offices where the original articles of incorporation are required by the code to be filed,' but, as before intimated, the code does not require any 'articles of association' nor 'certificate of incorporation' to be filed. The amendment proposed will remove the above objections."

It will also be observed that we have proposed other amendments, some striking out superfluous matter, others making the section applicable to corporations which have no capital stock, and defining in what newspapers the notice provided therein shall be published.

SEC. 363. *Omitted.*

COMMISSIONERS' NOTE: The provisions of section 363, incorporated into the code by act approved March 5, 1889 (Stats. 1889, 67), under that number, have been included in section 360, *ante*, for reasons set forth in the note appended thereto. The Commission therefore recommend the repeal of said section.

Articles of incorporation, correction of erroneous filing of.

SEC. 364. When articles of incorporation have been prepared, subscribed, and executed in accordance with the provisions of sections 290 and 292, and such original articles filed by error or inadvertence with the clerk of a county other than that named in the articles of incorporation as the county in which the principal business is to be transacted, and the secretary of state shall have issued a certificate of incorporation based on a certified copy of such original articles of incorporation, any stockholder or director of such corporation may petition the superior court of the county in which said original articles of incorporation were filed for an order to withdraw such original articles of incorporation, and file in place thereof a certified copy of the copy thereof on file in the office of the secretary of state. Such petition must be verified, and must state clearly the facts, showing that such articles of incorporation were filed by inadvertence and mistake; and notice of the

hearing of said petition must be given for at least ten days before the day of hearing, by publication in a newspaper published in the county where such petition is filed. Upon the day set for hearing the petition, the superior court may grant an order allowing such original articles of incorporation to be withdrawn, and a certified copy of the copy in the office of the secretary of state to be filed in the place thereof; and the original articles of incorporation must be filed within ten days thereafter in the county in which the principal business is to be transacted, as stated in such articles of incorporation, and a certified copy of the order allowing such action must be filed with the certified copy in the office of the secretary of state, after which said corporation shall be entitled to all rights and privileges of a private corporation, and the title to any property it may have previously acquired shall not be affected by reason of the failure to file the original articles of incorporation in the first instance.

COMMISSIONERS' NOTE: The present section 363 was added to this code by act approved March 19, 1889 (Stats. 1889, 332), and given this number notwithstanding that on the fifth of the same month and year, another section bearing the same number was also incorporated therein. That section has been disposed of as stated in the note preceding this section.

The proposed changes in the section retained consist in omitting the words "of this code" after the figures 292, and the words "place of" where they occur in the section, the same being unnecessary. The words "to be filed" have been inserted after the word "state" where it occurs next to the last time, and the word "filed" now found after the word "thereof" on the same line, has been omitted.

ARTICLE II.

RECORDS.

Section 377. Records, of what, and how kept.
378. Additional records.

Records, of what, and how kept.

SEC. 377. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of the directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered

in full—all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

Additional records.

SEC. 378. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "stock and transfer book," in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

COMMISSIONERS' NOTE: The provision in the above section requiring corporations for religious and benevolent purposes to provide in other by-laws for such records to be kept as may be necessary, has been omitted from this section and incorporated in section 599, *post*.

ARTICLE III.

EXAMINATION OF CORPORATIONS.

Section 382. Examination into affairs of corporation, how and by whom made.
383. Examination may be made by the legislature.

Examination into affairs of corporation, how and by whom made.

SEC. 382. The attorney-general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this state, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney-general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition.

Examination may be made by the legislature.

SEC. 383. The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on

oath in relation to the affairs and condition thereof; and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

SEC. 384. *Omitted.*

COMMISSIONERS' NOTE: Section 384 has been transferred to proposed Chapter V of this title and renumbered 404. The note under the latter number sets forth why the change is made.

ARTICLE IV.

JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY.

Section 388. Franchises may be treated as property and sold under execution.
389. Purchaser to transact business of corporation.
390. Purchaser may recover penalties, etc.
391. Corporation to retain power after sale.
392. Redemption of franchise.
393. When proceedings under execution may be had.

Franchises may be treated as property and sold under execution.

SEC. 388. For the satisfaction of any judgment against any person, company, or corporation authorized to receive tolls, the franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property.

Purchaser to transact business of corporation.

SEC. 389. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities until the redemption of the same, as hereinafter provided.

Purchaser may recover penalties, etc.

SEC. 390. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for any injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to

any subsequent action by or on behalf of the corporation for the same.

Corporation to retain power after sale.

SEC. 391. The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

Redemption of franchise.

SEC. 392. The corporation may, at any time within one year after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum paid therefor, with ten per cent interest per annum thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender, the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

COMMISSIONERS' NOTE: The words "per annum" inserted to make meaning of section certain.

When proceedings under execution may be had.

SEC. 393. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated.

CHAPTER IV.

EXTENSION AND DISSOLUTION OF CORPORATIONS.

Section 399. Proceedings to disincorporate.
400. On dissolution, directors to be trustees for creditors.
401. Corporations may extend corporate existence, how.

Proceedings to disincorporate.

SEC. 399. The dissolution of corporations is provided for:

1. If voluntary, in Chapter I of Title VI, Part III (Sec. 1227 *et seq.*), of the Code of Civil Procedure;

2. If involuntary, in Chapter II of Title VI, Part III (Sec. 1235 *et seq.*), of the Code of Civil Procedure.

COMMISSIONERS' NOTE: The amendment to this section consists in inserting a reference to a new chapter which it is proposed to add to the Code of Civil Procedure, providing for the dissolution of corporations, which action seems to be rendered necessary by the decision of the supreme court in the case of *Yore* vs. *Parker*, 108 Cal. 431.

On dissolution, directors to be trustees for creditors.

SEC. 400. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

Corporations may extend corporate existence, how.

SEC. 401. Every corporation formed for a period less than fifty years, may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject if voted by stockholders representing two thirds of the capital stock; or by two thirds of the members; or may be made upon the written assent of two thirds of the members or of stockholders representing two thirds of the capital stock. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation shall be extended for the specified period.

COMMISSIONERS' NOTE: The amendment to this section consists in requiring the written assent of stockholders representing two thirds of the capital stock; originally, it permitted two thirds in number of the stockholders by their written assent to extend the time of the existence of the corporation.

SEC. 402. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 209), this section was repealed, and for that reason has been omitted.

CHAPTER V.

GENERAL PROVISIONS AFFECTING CORPORATIONS.

Section 403. Title I to apply to all corporations with certain exceptions.
404. Chapter and article may be repealed.

Title I to apply to all corporations with certain exceptions.

SEC. 403. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails.

Chapter and article may be repealed.

SEC. 404. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders, or officers, for any liability which has been previously incurred.

COMMISSIONERS' NOTE: As the article in which this section was originally included referred merely to the examination of the affairs of corporations, and while the section itself refers to the right of the legislature to amend or repeal any part of the laws concerning corporations and their dissolution, it was thought advisable to place it at the end of this chapter. The number of the section has been changed as a consequence from 384, present designation, to 404.

TITLE II.

INSURANCE CORPORATIONS.

CHAPTER I. GENERAL PROVISIONS. [414–420.]
II. FIRE AND MARINE INSURANCE CORPORATIONS. [424–430.]
II*a*. COUNTY FIRE INSURANCE COMPANIES. [433–436*l*.]
III. LIFE, MUTUAL LIFE, HEALTH, ACCIDENT, AND TITLE INSURANCE CORPORATIONS. [437–453.]
IV. LIFE, HEALTH, ACCIDENT, AND ANNUITY OR ENDOWMENT INSURANCE ON THE ASSESSMENT PLAN, AND THE CONDUCT OF THE BUSINESS OF SUCH INSURANCE. [453*a*–453*n*.]
V. MUTUAL, BENEFICIAL, AND RELIEF ASSOCIATIONS. [453*o*–453*t*.]
VI. RELATING TO MUTUAL LIFE, HEALTH, AND ACCIDENT INCORPORATIONS ORGANIZED PRIOR TO 1873. [453*u*.]

CHAPTER I.

GENERAL PROVISIONS.

Section 414. Subscriptions to capital stock, when and how collected.
415. Purchase and conveyance of real estate.
416. Policies, how issued and by whom signed.
417. Dividends, of what and when declared.
418. Directors liable for loss on insurance in certain cases.
419. Capital to be at least two hundred thousand dollars.
420. Exception, capital of one hundred thousand dollars.

Subscriptions to capital stock, when and how collected.

SEC. 414. After the secretary of state issues the certificate of incorporation, as provided in Article I, Chapter I, Title I, of this part, the directors named in the articles of incorporation must proceed in the manner specified, or in their by-laws, or if none, then in such manner as they by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure the subscriptions to the full amount of the fixed capital; to levy assessments and installments thereon, and to collect the same, as in Chapter II of Title I provided.

Purchase and conveyance of real estate.

SEC. 415. No insurance corporation must purchase, hold, or convey real estate, except as hereinafter set forth, to wit:

1. Such as is requisite for its accommodation in the convenient transaction of its business, not exceeding in value one hundred and fifty thousand dollars;

2. Such as is conveyed to it, or to any person for it, by way of mortgage or in trust, or otherwise, to secure or provide for the payment of loans previously contracted, or for moneys due;

3. Such as is purchased at sales upon deeds of trust or judgments obtained or made for such loans or debts;

4. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its business dealings.

All such real estate so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same. No such real estate must be held for a longer period than five years, unless the corporation first procures a certificate from the insurance commissioner that the interests of the corporation will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the insurance commissioner directs in the certificate.

Policies, how issued and by whom signed.

SEC. 416. All policies made by insurance corporations must be subscribed by the president or vice-president, or in case of the death, absence, or disability of these officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are binding and obligatory upon the corporation as if executed over the corporate seal.

Dividends, of what and when declared.

SEC. 417. The directors of every insurance corporation, at such times as their by-laws provide, must make, declare, and

pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested as to them appears advisable; but the moneys received and notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend must not be treated as profits, nor divided, except as provided in Chapter II of this title.

Directors liable for loss on insurance in certain cases.

SEC. 418. If any insurance corporation is under liabilities for losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who make such insurance, or assent thereto, are severally and jointly liable for the amount of any loss which takes place under such insurance.

Capital to be at least two hundred thousand dollars.

SEC. 419. Every company, corporation, or association hereafter formed or organized under the laws of this state for the transaction of business in fire, marine, inland navigation, or life insurance, must have a subscribed capital stock equal to at least two hundred thousand dollars, twenty-five per cent of which must be paid in previous to the issuance of any policy, and the residue within twelve months from the day of filing the certificate of incorporation. No person, corporation, or association organized or formed under the laws of any other state or country, as a stock company, must transact any such insurance business in this state, unless such person, corporation, or association has a paid-up capital stock equal to at least two hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section 602 of the Political Code of this state. Nor must any person, corporation, or association, organized or formed under the laws of any other state or country as a mutual insurance company, transact any such insurance business in this state, unless such person, corporation, or association possesses available cash assets equal to at least two hundred thousand dollars over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section 602 of the Political Code of this state.

Exception, capital of one hundred thousand dollars.

SEC. 420. Every company, corporation, or association, hereafter formed or organized under the laws of this state for

the transaction of business of any kind of insurance not enumerated in section 419 of this code, must have a subscribed capital stock equal to at least one hundred thousand dollars, which must be paid in at the times and in the manner prescribed for the payment of the capital stock of a corporation organized under section 419 of this code. No such company, corporation, or association, formed or organized under the laws of any other state or country as a stock company, must transact any such insurance business in this state without a paid-up capital stock of not less than one hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section 602 of the Political Code of this state. Nor must any company, corporation, or association, formed or organized under the laws of any other state or country as a mutual insurance company, transact any such insurance business in this state unless such company, corporation, or association, possesses available cash assets equal to at least one hundred thousand dollars over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section 602 of the Political Code of this state.

CHAPTER II.

FIRE AND MARINE INSURANCE CORPORATIONS.

Section 424. Payment of subscriptions. Capital to be all paid in twelve months.
425. Certificate of capital stock paid up to be filed, and when.
426. Property which may be insured.
427. Funds may be invested, how.
428. Risk, limitation of.
429. Dividends, what to be reserved before making.
430. Reservation by companies with less than two hundred thousand dollars capital.

Payment of subscription. Capital to be all paid in twelve months.

SEC. 424. The entire capital stock of every fire or marine insurance corporation must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent of the whole capital stock is paid up.

Certificate of capital stock paid up to be filed, and when.

SEC. 425. The president and a majority of the directors must, within thirty days after the payment of the twenty-five

per cent of the capital stock, and also within thirty days after the payment of the last installment or assessment of the capital stock limited and fixed, prepare, subscribe, and swear to a certificate setting forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the county clerk of the county where the principal place of business of the corporation is located, and a duplicate thereof, similarly executed, with the insurance commissioner.

Property which may be insured.

SEC. 426. Every corporation formed for fire or marine insurance, or both, may make insurance on all insurable interests within the scope of its articles of incorporation, and may cause itself to be reinsured.

Funds may be invested, how.

SEC. 427. Corporations organized subsequent to April first, eighteen hundred and seventy-eight, under the laws of this state, for the transaction of business in any kind of insurance, may invest their capital and accumulations in the following-named securities:

1. In the purchase of or loans upon interest-bearing bonds of the United States government;

2. In the purchase of or loans upon interest-bearing bonds of any of the states of the United States, not in default for interest on such bonds;

3. In the purchase of or loans upon interest-bearing bonds of any of the counties and incorporated cities and towns of the states of California and Oregon, not in default of interest on such bonds;

4. In loans upon unincumbered real property, worth at least one hundred per cent more than the amount loaned; or upon merchandise or cereals in warehouse, but in no instance shall such loan be made in excess of seventy-five per cent of the security taken.

5. Corporations engaged in the business of insuring titles to real estate may, after the investment of one hundred thousand dollars in the manner provided for in subdivisions one, two, three, and four of this section, invest an amount not exceeding fifty per cent of their subscribed capital stock in the preparation or purchase of the materials or plant necessary to enable them to engage in such business; and such materials, or plant, shall be deemed an asset, valued at the actual cost thereof, in all

statements and proceedings required by law for the ascertainment and determination of the condition of such corporations.

6. Corporations organized for and engaged in the business of fire and marine insurance may, after the investment of two hundred thousand dollars in the manner provided in subdivisions one, two, three, and four of this section, invest the balance of their capital, and any accumulations, in interest-bearing first mortgage bonds of any corporations (except mining companies), not in default of interest, organized and carrying on business under the laws of any state of the United States; *provided*, that a two thirds vote of all the directors of such corporations shall approve such investment. It shall be the duty of the officers of such corporation to report quarterly, on the first days of January, April, July, and October of each year, to the insurance commissioner, a list of such investments so made by them; and the insurance commissioner may, if such investments, or any of them, seem injudicious to him, require the sale of the same.

But no investment in the securities named in subdivisions one, two, three, and six of this section, must be made in an amount exceeding the market value of such securities at the date of such investment.

Risk, limitation of.

SEC. 428. Fire and marine insurance corporations must never take, on any one risk, whether it is a marine insurance, or an insurance against fire, a sum exceeding one tenth part of their capital actually paid in, and intact at the time of taking such risk, without reinsuring the excess above one tenth.

Dividends, what to be reserved before making.

SEC. 429. No corporation formed subsequent to April first, eighteen hundred and seventy-eight, under the laws of this state, and transacting fire, marine, inland navigation, insurance business, or insurance provided for by section 420 of this code, except insurance of the title to real property, must make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock;

2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks;

3. A fund equal to one half of the amount of all premiums on all other risks not terminated at the time of making such dividend;

4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes.

Reservation by companies with less than two hundred thousand dollars capital.

SEC. 430. No fire or marine insurance corporation, with a subscribed capital of less than two hundred thousand dollars, must declare any dividends, except from profits remaining on hand after reserving:

1. A sum necessary to form, with the subscribed capital stock, the aggregate sum of two hundred thousand dollars;

2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks;

3. A fund equal to one half the amount of all premiums on fire risks and marine time risks not terminated at the time of making such dividend;

4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes.

COMMISSIONERS' NOTE: Old sections 431 and 432 are transferred to Chapter III, of this title, and renumbered 452 and 453.

CHAPTER II*a*.

COUNTY FIRE INSURANCE COMPANIES.

Section 433. Directors.
434. Officers.
435. Bonds.
436. Powers. By-laws.
436*a*. Membership.
436*b*. Risks.
436*c*. Classifying risks.
436*d*. Property outside of county.
436*e*. Losses.
436*f*. Same; assessments.
436*g*. Notice of assessments.
436*h*. Action of assessment.
436*i*. Annual statement.
436*j*. Withdrawals.
436*k*. Report of officers.
436*l*. Dissolution.

Directors.

SEC. 433. The number of directors shall not be less than seven nor more than eleven, a majority of whom shall constitute a quorum to do business. These directors shall be elected from the members of the association by ballot, and shall hold office for one year, or until their successors are elected and qualified. The annual meeting of the members of

the company shall be held on the second Monday in January of each year. In the election of the first board of directors each member shall be entitled to one vote. At every subsequent election, every person insured shall be entitled to as many votes as there are directors to be elected, and an equal additional number for every risk or risks he holds in the company, and he may cast the same in person or by proxy, distributing them among the directors to be elected, or among a less number of directors, or cumulating them upon one candidate, as he shall see fit.

Officers.

SEC. 434. The directors shall elect, from their own number, a president and a vice-president, and shall also elect a treasurer and a secretary, who may or may not be a member of the company. All of such officers hold their office for one year from the date of their election, or until their successors are elected and qualified.

Bonds.

SEC. 435. The treasurer and secretary shall give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

Powers. By-laws.

SEC. 436. Such corporation and its directors shall possess the usual powers and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution and the laws of this state, as may be deemed necessary for the management of its affairs, in accordance with the provisions of this chapter. Also, to prescribe the duties of its officers and to fix their compensation, and to alter and amend its by-laws when necessary.

Membership.

SEC. 436*a*. Any person owning property in the county for which any such company is formed may become a member of such company by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto, and no person not residing in the county in which the company is formed shall become a director of such company.

Risks.

SEC. 436*b*. Such company may issue policies only on detached dwellings, schoolhouses, churches, barns (except livery barn and hotel barns), and other farm buildings, and such

property as may be contained therein; also, other property on the premises owned by the insured; hay and grain in stack or in the field, and livestock on the premises of the insured, anywhere in the county, for any time not exceeding five years, and not to extend beyond the time limited for the existence of the charter, and for an amount not to exceed four thousand five hundred dollars on any one risk; *provided*, that no company which has been organized more than six months shall write insurance subject to one fire exceeding three per cent of the amount of risk upon the books of such company. All persons so insured shall give their obligation to the company, binding themselves, their heirs and assigns, to pay their pro rata share to the company of the necessary expense and of loss by fire which may be sustained by any member thereof during the time for which their respective policies are written, and they shall also at the time of effecting the insurance pay such a percentage in cash, and such other charges, as may be required by the rules or by-laws of the company.

Classifying risks.

SEC. 436*c*. All such companies must classify the property insured therein at the time of issuing policies thereon under different rates, corresponding as nearly as may be to the greater or less risk from fire loss which may be attached to the several kinds of property insured.

Property outside of county.

SEC. 436*d*. No such company shall insure any property beyond the limits of the county within which the company is organized, nor shall any company issue policies of insurance on any property within the limits of any city containing over six thousand inhabitants at the time of the organization of such company; *provided*, that no dwelling shall be insured within the corporate limits of any city or towns exposed by any other building within one hundred feet, or by any other risk other than a dwelling or private barn, within two hundred feet of the risk assumed; *provided*, that the amount of insurance shall not exceed seventy-five per cent of the value of the property, and that no additional insurance shall be allowed.

Losses.

SEC. 436*e*. Every member of such company who may sustain loss or damage by fire shall immediately notify the president, or, in his absence, the secretary thereof, stating the amount of damages or loss sustained or claimed, and if not more than

two hundred dollars, then the president and secretary shall proceed to ascertain the amount of such loss or damage, and adjust the same. If the claim for damage or loss be an amount greater than two hundred dollars, then the president of such company, or in his absence, the vice-president, or in the absence of both, the secretary thereof, shall forthwith convene the board of directors of such company, whose duty it shall be when convened to appoint a committee, of not less than three disinterested members of such company, to ascertain the amount of such damage or loss. If in either case there is a failure of the parties to agree upon the amount of such damage or loss, they shall submit the question of the amount of such loss to arbitration. The president of the company shall appoint one disinterested person to act as arbitrator, and the claimant or insured shall appoint another, and if such two arbitrators fail to agree upon the amount of such loss, then they shall select a third disinterested person to act with them. Such arbitrators so appointed shall have full authority to examine witnesses, and to do all other things necessary to the proper determination of the amount of loss sustained by the claimant, and shall make their award in writing to the president of such company, and such award so as aforesaid made shall be final as to the amount of the loss sustained. The pay of the said committee shall be three dollars per day for each day's services so rendered, and five cents for each mile necessarily traveled in the discharge of their duties, which shall be paid by the claimants, unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case such expense shall be paid by the company.

Same, assessments.

SEC. 436*f*. When the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the president shall convene the directors of said company, who shall make an assessment upon all the property to the amount for which each several piece of property is insured, taken in connection with the rate of premium under which it may be classified.

Notice of assessments.

SEC. 436*g*. It shall be the duty of the secretary, whenever such an assessment shall have been made, to immediately notify every person holding a risk in such company, personally, by an agent, or by letter directed to his usual post office

address, of the amount of such loss, and the sum due from him, as his share thereof, and of the time and to whom such payment is to be made; but such time shall not be less than thirty days, nor more than ninety days, from the date of such notice.

Action of assessment.

SEC. 436*h*. An action may be brought against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this chapter, or other liabilities due the company, and the directors of any company so formed who shall willfully refuse or neglect to perform the duties imposed upon them by law or by the by-laws of the company, shall be liable in their individual capacity to the person sustaining such loss. An action may also be brought and maintained against any such company by members thereof for losses sustained if payment is withheld after the amount of such losses have been determined, and is due by the terms of the policy.

Annual statement.

SEC. 436*i*. It shall be the duty of the secretary to prepare an annual statement showing the condition of such company on the thirty-first day of December, and present the same at the annual meeting.

Withdrawals.

SEC. 436*j*. Any member of such company may withdraw therefrom by surrendering his policy for cancellation at any time while the organization continues the business for which it was organized, by giving notice in writing to the secretary thereof, and paying his share of all claims that may exist against such company; *provided*, that the company shall have power to cancel or terminate any policy by giving the insured five days' written notice to that effect, and returning to him any excess of premium he may have paid during the term of the policy, over the cost of his insurance, as measured by the rates of standard fire insurance companies doing business in this state.

Report of officers.

SEC. 436*k*. It shall be the duty of the president and secretary, within thirty days after the first day of January in each year, to prepare, under their own oath, and transmit to the insurance commissioner, a statement of the condition of the company on the last day of the month next preceding the

annual meeting. If, upon examination, the insurance commissioner finds that such company is doing business correctly, in accordance with the provisions of this chapter, he shall thereupon furnish the company his certificate, which shall be deemed authority to continue business during the ensuing year, subject, however, to the provisions of this chapter. For such examination and certificate the company shall pay one dollar. Each company shall pay at the time of organization five dollars to the insurance commissioner, for all services which he shall render in the matter of organization.

Dissolution.

SEC. 436*l*. Any such company may be proceeded against and dissolved in the manner and upon the same conditions as provided in case of other insurance companies incorporated in this state.

COMMISSIONERS NOTE: Chapter II*a* is an act of the legislature of 1897 (Stats. 1897, 439), here added to the code. The said act repeals all laws in conflict therewith, but the repealing clause has been omitted.

CHAPTER III.

LIFE, MUTUAL LIFE, HEALTH, ACCIDENT, AND TITLE INSURANCE CORPORATIONS.

Section 437. Capital stock. Guarantee fund.
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439. Fixed capital, what constitutes deficiency in.
440. Declaration of fixed capital to be filed.
441. Guarantee notes and interest, how disposed of.
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443. May invest in what securities, how.
444. Capital stock, how invested.
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451. Fraternal societies exempt from insurance laws.
452. Amounts to be reserved by life insurance companies.
453. Corporations for insuring titles to real estate.

Capital stock. Guarantee fund.

SEC. 437. Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than one hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as

a corporation until its capital stock is fully paid up in cash, nor until it has also obtained a fund, to be known as a "guarantee fund," of not less than two hundred and fifty thousand dollars, as is hereinafter provided. If more than the requisite amount is subscribed, the stock must be distributed pro rata among the subscribers. Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect.

Of what guarantee fund shall consist.

SEC. 438. The guarantee fund mentioned in the preceding section must consist of the promissory notes of solvent parties, approved by the board of directors and by each other, payable to the corporation, or its order, and at such times, in such modes, and in such sums, with or without interest, and conformable in all other respects to such requirements as the board of directors prescribe; but the amount of the notes given by any one person must not exceed in the whole the sum of five thousand dollars exclusive of interest. Such notes must be payable absolutely and at the option of the corporation; they must be negotiable, and may be indorsed and transferred or converted into cash, or otherwise dealt with by the corporation, at its discretion, without reference to any contingency of losses or expenses. Such notes, or the proceeds thereof, must remain with the corporation as a fund for the better security of persons dealing with it, and constitute the assets of the corporation, liable for all its debts, obligations, and indebtedness next after its assets from premiums and other sources, exclusive of capital stock, until the net earnings, over and above its expenses, losses, and liabilities, shall have accumulated in cash, or securities in which the net earnings have been invested, to a sum which, with the capital stock, is equal to the aggregate of the original amounts of the guarantee fund and of the capital stock.

Fixed capital, what constitutes deficiency in.

SEC. 439. The sum accumulated as provided in the preceding section, together with the capital stock, shall become and remain the fixed capital of the corporation, not subject to division among the stockholders or parties dealing with it, or to be expended in any manner otherwise than may be required in payment of the corporation's debts and actual expenses, until the business of the corporation is closed, its debts paid, and its outstanding policies and obligations of every kind canceled or

provided for; and if from any cause a deficiency at any time occurs in such fixed capital, no further division of profits must take place until such deficiency has been made up.

Declaration of fixed capital to be filed.

SEC. 440. Whenever the fixed capital of the corporation is obtained as hereinbefore provided, the president of the corporation and its actuary, or its secretary if there is no actuary, must make a declaration in writing, sworn to before some notary public, of the amount of such fixed capital, and of the particular kinds of property composing the same, with the nature and amount of each kind, which must be filed with the original articles of incorporation, and a copy, certified by the county clerk, must be published for at least four successive weeks, in a newspaper published in the county where the principal business of the corporation is situated. Upon the filing of such declaration the guarantee fund is discharged of its obligations, and all notes of the fund remaining in the control of the corporation, and not affected by any lien thereon, or claim of that nature, must be surrendered by it to the makers thereof, respectively, or other parties entitled to receive the same.

Guarantee notes and interest, how disposed of.

SEC. 441. Until the guarantee fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the fund unless another note of equal solvency is substituted therefor, with the approval of the board of directors. The corporation must allow a commission, not exceeding five per cent per annum, on all such guarantee notes while outstanding, and also interest on all moneys paid on such notes by the parties liable thereon, at the rate of twelve per cent per annum, payable half yearly until repaid by the corporation, unless the current rate of interest is different from this amount, in which case the rate payable may, from time to time, at intervals of not less than one year, be increased or reduced by the board of directors, so as to conform to the current rate.

Insured to be entitled to vote, when.

SEC. 442. After the filing of the declaration of the fixed capital, as in this chapter provided, the holders of policies of life insurance for the term of life, on which the premiums are not in default, may vote at the election of directors and have one vote for each one thousand dollars insured by their policies, respectively.

May invest in what securities, how.

SEC. 443. The number of directors specified in the articles of incorporation may be altered from time to time during the existence of the corporation by resolution, at the annual meeting of a majority of those entitled to vote at the election of directors, but the number must never be reduced below five.

Capital stock, how invested.

SEC. 444. Life, health, and accident insurance corporations may invest their capital stock as follows:

1. In loans upon unincumbered and improved real property within the state of California, which shall be worth, at the time of the investment, at least forty per cent more than the sum loaned;

2. In the purchase of or loans upon interest-bearing bonds, and other securities of the United States and of the state of California;

3. In the purchase of or loans upon interest-bearing bonds of any of the other states of the Union, or of any county, or incorporated city, or city and county, or school or high school district, in the state of California;

4. In the purchase of loans upon any stocks of corporations formed under the laws of this state, except of mining corporations, which shall have, at the time of the investment, a value, in the city and county of San Francisco, of not less than sixty per cent of their par value, and shall be rated as first-class securities.

But no loans shall be made on any securities specified in subdivisions three and four of this section, in any amount beyond sixty per cent of the market value of the securities, nor shall any loan be made on the stock of the corporation, or notes or other obligations of its corporators.

COMMISSIONERS' NOTE: The amendment to this section allows the investment of the capital stock of life, health, and accident insurance corporations to be made in interest-bearing bonds of school and high school districts of California, and the Commissioners are indebted for the suggestion to the Commission of 1895. (See Report of Commission of 1895, 61-62.)

Limitations to the holding of stock and in other particulars may be provided for in by-laws.

SEC. 445. The corporation may, by its by-laws, limit the number of shares which may be held by any one person, and make such other provisions for the protection of the stockholders and the better security of those dealing with it as to a majority of the stockholders may seem proper, not inconsistent with the provisions of this title or part.

Premiums, how payable.

SEC. 446. All premiums must be payable wholly in cash, or one half or a greater proportion in cash, and the remainder in promissory notes bearing interest, as may be provided for by the by-laws. Agreements and policies of insurance made by the corporation may be upon the basis of full or partial participation in the profits, or without any participation therein, as may be provided by the by-laws and agreed between the parties.

Valuation of policies outstanding, when; how estimated.

SEC. 447. Every life insurance corporation organized under the laws of this state must, on or before the first day of February of each year, furnish the insurance commissioner the necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December then next preceding. And every life insurance company organized under the laws of any other state or country, and doing business in this state, must, upon the written requisition of the commissioner, furnish him, at such time as he may designate, the requisite data for determining the valuation of all of its policies then outstanding. Such valuation must be based upon the rate of mortality established by the American experience life-table, and interest at four and one half per cent per annum; *provided*, that from and after the thirty-first day of December, A. D. eighteen hundred and ninety-one, such valuations must be based upon the rate of mortality established by the combined experience or actuaries' table of mortality, with interest at the rate of four per cent per annum. When the laws of any other state or territory require of a life insurance company organized under the laws of this state, a valuation of its outstanding policies by any standard of valuation different from that named in this section, the insurance commissioner is hereby authorized to make such valuation for use in such other state or territory, and to issue his certificate in accordance therewith. For the purpose of making the valuations, the insurance commissioner is authorized to employ a competent actuary, whose compensation for such valuations shall be three cents for each thousand dollars of insurance; to be paid by the respective companies whose policies are thus valued.

SEC. 448. *Omitted.*

COMMISSIONERS' NOTE: The Commissioners recommend the repeal of the above section, as it can have no effect under existing laws.

Valuation of policies, retaliatory provision.

SEC. 449. When the certificate of the insurance commissioner of this state, of the valuation of the policies of a life insurance company, as provided in section 447 of this code, issued to any company organized under the laws of this state, shall not be accepted by the insurance authorities of any other state, in lieu of a valuation of the same, by the insurance officer of such other state, then every company organized under the laws of such other state doing business in this state, shall be required to have a separate valuation of its policies made under the authority of the insurance commissioner of this state, as provided in section 447 of this code.

Policy contain what. Penalty.

SEC. 450. Every contract or policy of insurance hereafter made by any person or corporation organized under the laws of this state, or under those of any other state or country, with and upon the life of a resident of this state, and delivered within this state, shall contain, unless specifically contracted between the insurer and the insured for tontine insurance, or for other term or paid-up insurance, a stipulation that when, after three full annual premiums shall have been paid on such policy, it shall cease or become void solely by the non-payment of any premium when due, its entire net reserve, by the American experience mortality, and interest at four and one half per cent yearly, less any indebtedness to the company on such policy, shall be applied by such company as a single premium, at such company's published rates in force at the date of the original policy, but at the age of the insured at time of lapse, either to the purchase of non-participating term insurance for the full amount insured by such policy, or upon the written application by the owner of such policy, and the surrender thereof to such company within three months from such non-payment of premium, to the purchase of a non-participating paid-up policy, payable at the time the original policy would be payable if continued in force, both kinds of insurance to be subject to the same condition, except as to payment of premiums, as those of the original policies. It may be provided, however, in such stipulation, that no part of such term insurance shall be due or payable, unless satisfactory proof of death be furnished to the insurance company within one year after death, and that if death shall occur within three years after such non-payment of premium, and during such term of insurance, there shall be deducted from the amount payable the sum of all premiums that would have become due on the

original policy if it had continued in force. If the reserve on endowment policies be more than enough to purchase temporary insurance, as aforesaid, to the end of the endowment term, the excess shall be applied to the purchase of pure endowment insurance, payable at the end of the term, if the insured be then living. If any life insurance corporation or company shall deliver to any person in this state a policy of insurance upon the life of any person residing in this state, not in conformity with the provisions of this section, the right of such corporation or company to transact business in this state shall thereupon and thereby cease and terminate, and the insurance commissioner shall immediately revoke the certificate of such corporation or company authorizing it to do business in this state, and publish such revocation daily, for the period of two weeks, in three daily newspapers, one published in the city and county of San Francisco, one in the city of Sacramento, and the other in the city of Los Angeles.

COMMISSIONERS' NOTE: The amendment to this section consists in having the publication provided for therein made in three daily newspapers, one of which shall be published in the city of Los Angeles.

Fraternal societies exempt from insurance laws.

SEC. 451. All associations or secret orders, and other benevolent or fraternal coöperative societies, incorporated or organized for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to its members, or to the family of deceased members, and not for profit, are declared not to be insurance companies, in the sense and meaning of the insurance laws of this state, and are exempt from the provisions of all existing insurance laws of this state.

Amounts to be reserved by life insurance companies.

SEC. 452. No corporation formed under the laws of this state, and transacting life insurance business, must make any dividends, except from profits remaining on hand after retaining unimpaired:

1. The entire capital stock;

2. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes;

3. A sum sufficient to reinsure all outstanding policies, as ascertained and determined upon the basis of the American experience table of mortality, and interest at the rate of four and one half per cent per annum.

Corporations for insuring titles to real estate.

SEC. 453. Corporations transacting business in insuring titles to real estate shall annually set apart a sum equal to twenty-five per cent of their premiums collected during the year, which sum shall be allowed to accumulate until a fund shall have been created amounting to ten per cent of the subscribed capital stock. Such fund shall be maintained as a further security to policyholders, and shall be known as the surplus fund, and if at any time such fund shall be impaired by reason of a loss, the amount by which it may be impaired shall be restored in the manner hereinabove provided for its accumulation. The reporting of a loss shall be deemed an impairment of such fund for the purposes of this section. Such corporation must not make any dividend except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock;

2. The amount owing to the surplus fund, under the provisions of this section;

3. A sum sufficient to pay all losses reported, or in course of settlement, which shall be in excess of the surplus fund, and all liabilities for expenses and taxes.

COMMISSIONERS' NOTE: Sections 452 and 453 are old sections, numbered 431 and 432, respectively, under head of Fire and Marine Insurance, Chapter II, here placed under the appropriate heading.

CHAPTER IV.

LIFE, HEALTH, ACCIDENT, AND ANNUITY OR ENDOWMENT INSURANCE ON THE ASSESSMENT PLAN, AND THE CONDUCT OF THE BUSINESS OF SUCH INSURANCE.

Section 453*a*. Construction of contract.
453*b*. Formation of corporation. Deposit. Certificate.
453*c*. Reincorporation.
453*d*. Contracts. Liens. Payments.
453*e*. Reserve fund. Investments.
453*f*. Requirements from foreign corporations. License.
453*g*. Limitation as to age. Certificate. False statement.
453*h*. Exemption from attachment.
453*i*. Annual statement.
453*j*. Duty of commissioner.
453*k*. Lapse. Notice of assessment.
453*l*. Fees.
453*m*. Expenses of prosecution.
453*n*. No application to secret societies.

Construction of contract.

SEC. 453*a*. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical

disability of a person insured thereunder, or for the payment of any sums of money dependent in any degree upon the collection of assessments or dues from persons holding similar contracts, shall be deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums.

Formation of corporation. Deposit. Certificate.

SEC. 453*b*. Corporations may be formed under the general laws of this state to carry on the business of mutual insurance upon the assessment plan, and shall be subject only to the provisions of this chapter. No such corporation shall issue contracts of insurance until at least two hundred persons have applied in writing for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand dollars. This sum shall be invested in bonds or securities approved by the insurance commissioner of this state, or deposited in some bank in this state where it will earn interest. Said bonds or securities, or evidence of such deposit, shall be placed, through the insurance commissioner of this state, with the state treasurer, and the principal sum shall be held in trust for the contract-holders of such corporation, with the right in the corporation to exchange said bonds, securities, or evidence of bank deposit for others of like value. Such corporation shall also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the insurance commissioner that it has complied with the requirements of this chapter; and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor shall the commissioner approve any name or title so closely resembling another as to mislead the public. No corporation formed hereunder shall have legal existence after one year from the date of its articles, unless its organization has been completed and business commenced; nor shall any corporation or individual solicit or cause to be solicited any business, until such corporation shall have complied with the provisions of section 633 of the Political Code of this state.

Reincorporation.

SEC. 453*c*. Any existing corporation engaged in transacting the business of life, health, accident, or endowment insurance on the assessment plan, may reincorpate under the provisions of this code and under the provisions of this chapter;

provided, that it shall not be obligatory upon such corporation to reincorporate; and any such existing corporation may continue to exercise all rights, powers, and privileges conferred by this chapter the same as if incorporated hereunder.

Contracts. Liens. Payments.

SEC. 453*d*. The contracts of insurance issued by such corporation shall specify the sum or sums to be paid upon the happening of the contingency insured against, and when such payment will be made. Unless the contract shall have been invalidated by fraud or by breach of the conditions, the corporation shall be obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein named, and such indebtedness shall be a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of insolvency. Failure to make such payment, within thirty days after notice, at the home office, by mail, as provided by law, or final judgment, unless waiver is made by the beneficiary, shall constitute a forfeiture of the right to do business.

Reserve fund. Investments.

SEC. 453*e*. Every domestic corporation organized or doing business under this chapter shall accumulate a reserve or emergency fund, which shall at all times be not less than the largest benefit contracted to be paid by it to any one person. Every corporation organized hereunder must accumulate such fund within one year from the date of its certificate of incorporation. Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, shall be so invested and deposited, as provided in section 453*b* hereof, with the right in the corporation to exchange any such securities for others of equal value. The deposit required by section 453*b* shall constitute a part of the reserve required by this section, at the option of such corporation. When any corporation doing business hereunder shall discontinue business, this fund shall be returned to such corporation, or so disposed of as may be determined by the superior court of the county, or city and county, in which its principal place of business is located.

COMMISSIONERS' NOTE: The words "existing domestic corporations must accumulate such fund within one year from the date when this act takes effect, and any," after the word "every" and before the word "corporation," as they appeared in the original act, are here stricken out, as they can no longer be of effect; and the words "must accumulate such fund" are added after the word "under" and before the word "within," for the purpose of

carrying the law into effect; both changes being necessary for the purpose of codifying.

Requirements from foreign corporations. License.

SEC. 453*f*. Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance must, as a condition precedent to transacting business in this state, comply with the provisions of section 358*a* of this code, and deposit with the insurance commissioner of this state a certified copy of its charter or other instrument required by its home authorities; a statement under oath, of its president or secretary, of its business for the preceding year, in such form as may be required by the insurance commissioner of this state; an appointment of a general agent, service upon whom shall bind the corporation; a certificate that for the next preceding twelve months it has paid in full the maximum amount named in its contracts of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums; and evidence, satisfactory to the insurance commissioner, that the corporation has accumulated a fund equal to that required of like corporations in this state, constituting a reserve or surplus fund, held in trust for the benefit of its contract-holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The insurance commissioner shall thereupon issue a license to such corporation to do business in this state. This license must be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof shall be given by the insurance commissioner, by publication in some newspaper published in the city and county of San Francisco, for two weeks, daily, and no new contracts shall be made by such company in this state. When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this chapter, like license, fees, taxes, or penalties shall be imposed upon corporations of the same kind and their agents of such state or country doing business in this state.

COMMISSIONERS' NOTE: The original act has been amended in this section, by making the provisions of section 358*a*, *ante*, apply to foreign mutual assessment insurance companies.

Limitation as to age, certificate, false statement.

SEC. 453*g*. No corporation doing business under this chapter (except accident or casualty corporations) shall issue a contract of insurance upon the life of any person under fifteen and over sixty-one years of age. Every such contract of insurance shall be founded upon written application therefor, and (except where the application is for health, accident, or casualty insurance only, or for one hundred dollars life insurance or less) such application shall be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, and showing the applicant to be in good health, and recommending the issuance of a contract of insurance. Any solicitor, agent, employé, examining physician, or other person making a false or fraudulent statement to any corporation doing business under this chapter, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, shall be guilty of a misdemeanor; and any person who shall make a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract-holder in any such corporation, for the purpose of procuring or aiding the beneficiary or beneficiaries or contract-holder in procuring the payment of a benefit named in the contract, shall be guilty of perjury.

COMMISSIONERS' NOTE: The amendment made in this section to the original act omits the penalty, and hence section 19 of the Penal Code applies.

Exemption from attachment.

SEC. 453*h*. The money, benefit, annuities, endowment, charity, relief, or aid to be paid as provided by the contracts issued by any corporation doing business under this chapter, shall be exempt from attachment, execution, or other legal process.

COMMISSIONERS' NOTE: This amendment to the original act is suggested as being more in harmony with the policy of our laws relative to the subject than the original.

Annual statement.

SEC. 453*i*. Every domestic and foreign corporation doing business under this chapter shall annually, on or before the first day of February, file with the insurance commissioner, in such form as he shall prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The insurance commissioner, in person or by duly authorized deputy, shall have the power of examination into the affairs of any domestic corporation doing business or claim-

ing to do business under this chapter, at any time, in his discretion, and shall make such examination at least once a year.

Duty of commissioner.

SEC. 453*j*. If the insurance commissioner, after examination of the affairs of a corporation, shall find that such corporation is not doing its business in conformity to this chapter, or that it is doing a fraudulent or unlawful business, or that it is not carrying out the terms of the contract, or that it cannot within three months from the date of notice of default pay its obligations, he shall cite the president, secretary, manager, or general agent of said corporation, or all of them, to appear before him (stating the time and place), to show cause why the authority of such corporation to do business shall not be revoked; and if they fail to show cause, then he shall report the facts to the attorney-general of this state, who shall commence proceedings in the proper court to restrain said corporation from doing any further business.

Lapse. Notice of assessment.

SEC. 453*k*. No policy or certificate issued by any corporation or association doing business under the provisions of this chapter shall lapse or be lapsed for the non-payment of any assessments, dues, or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given post office address, a notice setting forth the amount to be paid, and the time the same is due and payable; and such notice shall be mailed at least fifteen days before the assessment is due (*provided*, that such corporations doing business under this chapter as collect specific amounts at specific dates, as contained in the contract, shall not be compelled to send such notices), and an affidavit made by the officer, bookkeeper, or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records in the office of the said corporation, showing that such notice was mailed, and the date of mailing shall constitute prima facie evidence of the mailing of such notice.

Fees.

SEC. 453*l*. The fees for filing statements, certificates, or other documents required by this chapter for any service or act of the insurance commissioner, and the penalties for any violation of this chapter, shall, except as otherwise provided herein, be the same as provided in the laws of this state relating to life insurance companies, and shall be disposed of as provided by such laws.

Expenses of prosecution.

SEC. 453*m*. For all lawful expenses under this chapter, or by reason of any of its provisions, in the prosecution of any suit or proceedings, or otherwise, for the enforcement of the provisions of this chapter, the insurance commissioner must present bills, duly certified by him, and accompanied with vouchers, to the state board of examiners, who may allow the same, and direct payment thereof to be made; and the state controller shall draw warrants therefor on the state treasurer for the payment of the same to the insurance commissioner, in addition to the ordinary contingent expense, which warrants shall be payable out of the general fund.

No application to secret societies.

SEC. 453*n*. The provisions of this chapter shall not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having a ritualistic work and ceremonies in their societies, lodges, or councils, nor to any mutual or benefit association, organized or formed and composed only of members of any such society, lodge, or council exclusively.

COMMISSIONERS' NOTE: Chapter IV is an act of the legislature of 1891, (see Stats. 1891, 126), here added to the code. The said act repeals all laws in conflict therewith; the repealing clause, however, is not incorporated herein.

CHAPTER V.

MUTUAL BENEFICIAL AND RELIEF ASSOCIATIONS.

Section 453*o*. Mutual benefit and relief associations.
453*p*. How formed.
453*q*. Powers.
453*r*. Same.
453*s*. By-laws.
453*t*. Old associations.

Mutual benefit and relief associations.

SEC. 453*o*. Associations may be formed for the purpose of paying to the nominee of any member a sum upon the death of said member, not exceeding three dollars for each member of such association. No such association shall exceed in number three thousand persons.

How formed.

SEC. 453*p*. Such association shall be formed by filing a verified certificate in the office of the clerk of the county in which the principal place of business shall be situated, and filing a like certificate in the office of the secretary of state; such cer-

tificate shall state the general objects of the association, its principal place of business, and the names of the officers selected to hold office for the first three months, and shall be signed by said officers, and verified by at least three of them.

Powers.

SEC. 453*q*. Said associations, upon the death of each member, may levy an assessment upon each member living at the time of the death, not exceeding three dollars for each member, and collect the same, and pay the same to the nominee of such deceased; and may also provide the payment of such annual payments of members as may be deemed best. Such annual assessment upon any one member not to be raised above the annual assessment established at the time such member joins such association.

Same.

SEC. 453*r*. Such association, by its name, may sue and be sued, and may loan such funds as it may have on hand, and may own sufficient real estate for its business purposes, and such other real estate, as it may be necessary to purchase on foreclosure of its mortgages; *provided*, such real estate, so obtained, through foreclosure, shall be sold and conveyed within five years from the day title is obtained, unless the superior court of the proper county shall, upon petition and good cause shown, extend the time.

By-laws.

SEC. 453*s*. Such association may make such by-laws, not inconsistent with the laws of this State, as may be necessary for its government and for the transaction of its business, and shall not be subject to the provisions of the general insurance laws.

Old associations.

SEC. 453*t*. All associations formed prior to March twenty-eighth, eighteen hundred and seventy-four, for the objects contemplated by this chapter, and now in operation, may avail themselves of its provisions by filing the certificate provided for in section 453*p*; *provided*, that such society shall not have greater membership than three thousand.

COMMISSIONERS' NOTE: Chapter V is an act of the legislature approved March 28, 1874 (Stats. 1873–74, 746), here inserted as part of the code. A few minor changes in the wording of the act have been made in order to harmonize the same with the code.

CHAPTER VI.

RELATING TO MUTUAL LIFE, HEALTH, AND ACCIDENT INSURANCE CORPORATIONS ORGANIZED PRIOR TO 1873.

Section 453*u*. Law governing to be found in general laws.

Law governing to be found in general laws.

SEC. 453*u*. All mutual life, health, and accident corporations, organized prior to eighteen hundred and seventy-three, which have not reincorporated since eighteen hundred and seventy-three, are governed by section —— to section ——, both inclusive, of the Revised Statutes, subject, however, to the limitations imposed by the provisions of section 288 of this code.

COMMISSIONERS' NOTE: The law mentioned in this chapter is an act of the legislature of 1865–66, p. 752, as amended in 1867–68, and 1880, p. 229, carried into the Revised Statutes, it not being deemed advisable to encumber the code with a long series of statutes that can have little or no application to existing conditions.

TITLE II*a*.

CORPORATIONS FOR PREVENTING FIRES.

CHAPTER I. CONFERRING CERTAIN POWERS UPON CORPORATIONS ORGANIZED FOR THE PURPOSE OF DISCOVERING AND PREVENTING FIRES, AND OF SAVING PROPERTY AND HUMAN LIFE FROM CONFLAGRATION. (453*w*–453*y*.)

CHAPTER I.

CONFERRING CERTAIN POWERS UPON CORPORATIONS ORGANIZED FOR THE PURPOSE OF DISCOVERING AND PREVENTING FIRES, AND OF SAVING PROPERTY AND HUMAN LIFE FROM CONFLAGRATION.

Section 453*w*. Power to equip and employ men as fire patrol.
453*x*. Privileges granted to corps.
453*y*. Costs and expenses of organization.

Power to equip and employ men as fire patrol.

SEC. 453*w*. Any corporation of underwriters heretofore organized and now existing, or which may be hereafter organized under the laws of this state, for the purpose of discovering and preventing fires, and of saving property and human life

from conflagration, and doing business within any municipal corporation of this state, shall have power, at its own proper cost and expense, to maintain a corps of men, with proper officers, equipped with the necessary machinery and apparatus therefor, whose duty it shall be, so far as practicable, to discover and prevent fires, and save property and human life from conflagration; and for the effective discharge of such duties, power and authority is hereby granted such corps, or any officer thereof, to enter any building on fire, or in which property is on fire, or which such corps, or any officer thereof, shall deem to be immediately exposed to any existing fire, or in danger of taking fire from a burning building, and to remove or otherwise save and protect from conflagration or damage by water any property, during and immediately after such fire; *provided*, that nothing in this title shall be so construed as in any degree to lessen, impair, or interfere with the powers, privileges, duties, or authority of the regular fire department of such municipality; *and provided further*, that no act of such corps shall justify any owner of any building or property in abandoning such building or property.

Privileges granted to corps.

SEC. 453*x*. Such corporation, with its officers and corps, when running to a fire, shall, with its horses, vehicles, and salvage apparatus, have the same right of way as is or may be bestowed by any ordinance of the municipality or law of this state upon the regular fire department of the municipality wherein such corporation is acting; *provided*, that the rights of such fire department shall always be paramount to the rights of said corporation. All ordinances now existing or which may hereafter be passed by the municipal authorities of any city and county, or of any incorporated city or town wherein such corporation may carry on business, and all laws of this state applicable to such city and county, or city or town, for the conviction or punishment of any person or persons willfully or carelessly obstructing the progress of the apparatus of the fire department of such city and county, or city or town, while going to a fire, or of any person or persons willfully or carelessly injuring any animal or property of said fire department, shall be equally applicable to any person or persons willfully or carelessly obstructing the progress of the apparatus of such corporation while going to a fire, and to any person or persons who shall willfully or carelessly injure any animal or property of such corporation; and said laws and ordinances, and their

penalties, may be enforced in the same courts and in the same manner, and with equal force and effect, as in the case of the fire department.

Costs and expenses of organization.

SEC. 453*y*. In the month of July in every year there shall be held a meeting of all corporations heretofore created, or that may be hereafter created under this title, of which ten days' previous notice shall be inserted in at least one daily newspaper published in the municipality where said corporation is organized or established, at which meeting each insurance company, corporation, association, underwriter, agent, person, or persons doing a fire insurance business in said municipality, whether members of said corporation or not, shall have a right to be represented at such meeting, and shall be entitled to one vote. A majority of the whole number so represented shall have power to decide upon the question of sustaining the fire patrol organized by corporations heretofore created, or that may be hereafter created under this title, and fixing the maximum amount of expenses which shall be incurred therefor during the fiscal year next ensuing, which amount shall in no case exceed two per cent of the aggregate premiums returned as received, as provided in this section, and the whole of such amount, or so much thereof as may be necessary, may be assessed upon all insurance companies, corporations, associations, underwriters, agents, person, or persons, who assume risks and accept premiums for fire insurance in said municipality, as hereinbefore mentioned, in proportion to the several amounts of premiums returned as received by each, as hereinafter provided, and such assessments shall be collectable, by and in the name of said corporation, in any court of law in the state of California, having jurisdiction, in such manner and at such time or times as said corporation may determine. In order to provide for the payment of persons employed by said corporation, and to maintain suitable rooms and apparatus for saving life and property contemplated, said corporation is empowered to require a statement to be furnished semi-annually, by all insurance companies, corporations, associations, underwriters, agents, or persons, of the aggregate amount of premiums received for insuring property in the municipality where said corporation is organized or established, for and during the six months next preceding the first day of July and the first day of January of each year, which statement shall be sworn to by the president or secretary of the corporation or association, or

by the agent or person so acting or effecting such insurance in said municipality, and shall be handed to the secretary of said corporation heretofore created or hereafter to be created under the provisions of this title, within ten days after the first day of July and the first day of January of each year. Said secretary shall, within the ten days aforesaid, by written or printed demand signed by him, require from every insurance company, corporation, association, underwriter, agent, or persons engaged in the business of fire insurance in the municipality where said corporation is organized or established, the statement hereinbefore provided for. Such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent, or person within said municipality; and every officer of such insurance company, corporation, association, and every such underwriter, agent, or person, who shall, for fifteen days after said demand, neglect to render the statement herein provided for, shall forfeit fifty dollars for the use of said corporation, and he shall also forfeit for its use twenty-five dollars in addition for every day he shall so neglect after the expiration of the said fifteen days, and such additional penalty may be computed and collected up to the time of the trial of any action brought for the recovery thereof.

COMMISSIONERS' NOTE: Title II*a* is an act of the legislature of 1876, p. 689, as amended in 1897, p. 223, and which the Commissioners deem should have a place in the code.

TITLE III.

RAILROAD CORPORATIONS.

CHAPTER I. FRANCHISES, OFFICERS, AND CORPORATE STOCK. [453*z*–459.]
II. ENUMERATION OF POWERS. [465–497.]
III. BUSINESS, HOW CONDUCTED, MISCELLANEOUS PROVISIONS. [479–496*b*.]
IV. BOARD OF RAILROAD COMMISSIONERS. [496*c*–496*p*.]

CHAPTER I.

FRANCHISES, OFFICERS, AND CORPORATE STOCK.

Section 453*z*. Franchise for elevated and underground railroad tracks.
454. Directors to be elected, when. Notice of.
455. Requisite for transfer of stock.
456. May borrow money and issue bonds, when and for what purpose. Limitation of amount of security.

Section 457. Sinking fund must be provided. Bonds or notes may be converted into stock.
458. Capital stock fixed, when certificate filed.
459. Certificate of payment of fixed capital stock.

Franchise for elevated and underground railroad tracks.

SEC. 453*z*. The legislative or other governing body to whom is intrusted the government of any county, city and county, city, or town, under such restrictions, regulations, and limitations, and upon such terms and payment of license taxes as the legislative or other governing body may provide, may grant franchises over, along, across, and under the streets, roads, and public highways, of any such county, city and county, city, or town, for the construction of elevated or underground railroad tracks over, along, across, and underneath such streets, roads, and public highways, for a term not exceeding fifty years; *provided*, that before the granting of such franchise there shall be presented to such legislative or other governing body a petition signed by the owners of a majority of the real property, other than public property, on each side of the line of such proposed real property. This section shall apply to all railroad companies heretofore or hereafter incorporated.

Directors to be elected, when. Notice of.

SEC. 454. Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in Article II, Chapter I, Title I, of this part.

Requisites for transfer of stock.

SEC. 455. No stock in any railroad corporation is transferable until all the previous calls or installments thereon have been fully paid in; nor is any such transfer valid, except as between the parties thereto, unless at least twenty per cent has been paid thereon and certificates issued therefor, and the transfer approved by the board of directors.

May borrow money and issue bonds, when and for what purpose. Limitation of amount and security.

SEC. 456. Railroad corporations may borrow, on the credit of the corporation, and under such regulations and restrictions as the board of directors thereof, by unanimous concurrence, may impose, such sums of money as may be necessary for constructing and completing their railroad, with its equipment, and for the purchase of all necessary rolling stock and all else

relative thereto, and may issue promissory notes therefor, or may issue and dispose of bonds to raise money necessary to pay therefor, in denominations of not less than five hundred dollars, at a rate of interest not exceeding ten per cent per annum; and may also issue bonds, or promissory notes, of the same denomination and rate of interest, in payment of any debts or contracts for constructing and completing their road, with its equipment and rolling stock, and all else relative thereto, and for the purchase of railroads and other property within the purposes of the corporation. The amount of bonds, or promissory notes, issued for such purposes, must not exceed in all the amount of their capital stock; and to secure the payment of such bonds or notes they may mortgage their corporate property and franchises, or may secure the payment of such bonds or notes by deed of trust of their corporate property and franchises. Any person or corporation formed under the laws of this state, or of any other state within the United States, that the directors of the railroad corporation may, by unanimous concurrence, select, may be trustees in such deed of trust.

Sinking fund must be provided. Bonds and notes may be converted into stock.

SEC. 457. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note so issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing thereon into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt.

Capital stock fixed, when. Certificate filed.

SEC. 458. When, at any time after filing the articles of incorporation, it is ascertained that the capital stock therein set out is either more or less than actually required for constructing, equipping, operating and maintaining the road, by a two thirds vote of the stockholders, the capital stock must be fixed, and a certificate thereof, and of the proceedings had to fix the same, must be made out and filed in the office of the secretary of state.

Certificate of payment of fixed capital stock.

SEC. 459. Within thirty days after the payment of the last installment of the fixed capital stock of any railroad

corporation organized under this title and part, the president and secretary, and a majority of the directors thereof, must make, subscribe, and file in the office of the secretary of state a certificate stating the amount of the fixed capital stock, and that the whole thereof has been paid in. The certificate must be verified by the affidavit of the president and secretary.

COMMISSIONERS' NOTE: The only amendment to this chapter has been the addition of section 453z thereto. This section includes substantially sections 492 and 493, *post*, which were added to the code by an amendment of March 22, 1895. As then located, they formed a part of the chapter on the conduct of the business of railroad corporations, and as the section applies only to the granting of franchises over public highways, the Commissioners thought it best to suggest their removal to this portion of the code.

CHAPTER II.

ENUMERATION OF POWERS.

Section 465. Enumeration of powers.
466. Map and profile must be filed.
467. May change line of road. New maps must be filed.
468. Forfeiture of franchise, when.
469. Crossings and intersections. Condemnations.
470. Not to use streets, alleys, or water in cities or towns, except by a two thirds vote of the city or town authorities.
472. When crossing railroads or highways, how other lands are acquired.
473. May consolidate. Publication of notice. Copy to be filed.
473*a*. May contract with one another.
474. State lands granted for use of.
475. Same; not to embrace certain lands.
476. Wood, stone, and earth may be taken from state lands.
477. Lands revert to state, when.
478. Selections made, how proved and certified to.

Enumeration of powers.

SEC. 465. Every railroad corporation has power:

To survey road.

1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employés may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto;

To take, hold, and convey real estate.

2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid

and encourage the construction, maintenance, and accommodation of such railroad;

To acquire, hold, and use real estate and other property.

3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

To lay out road, how wide.

4. To lay out its road, not exceeding nine rods wide, and to construct and maintain the same with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same;

To construct road, where.

5. To construct their roads across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporations shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

To cross or connect with roads.

6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in Title VII, Part III, Code of Civil Procedure;

To purchase lands, timber, stone, gravel, etc.

7. To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in Title VII, Part III, Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation;

To carry persons and freight and receive tolls therefor.

8. To carry persons and property on their railroad, and receive tolls or compensation therefor;

To erect necessary buildings.

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight, and business;

To regulate time and freight, subject to legislation.

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor, within the limits prescribed by law and subject to alteration, change, or amendment by the legislature at any time;

To regulate force and speed, etc.

11. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

Map and profile must be filed.

SEC. 466. Every railroad corporation in this state must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the secretary of state; and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which such parts of the road are, there to remain, of record, forever. The maps and profiles must be certified by the chief engineer, the acting president, and secretary of such company, and copies of the same, so

certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

May change line of road. New maps must be filed.

SEC. 467. If at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision seven, section 465, alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are of file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five years after such change. No new location, as herein provided, must be so run as to avoid any points named in their articles of incorporation.

Forfeiture of franchise, when.

SEC. 468. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited.

Crossings and intersections. Condemnations.

SEC. 469. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad wholly within the limits of a city or town, or other railroad, the rails of either, or each road, must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and, in case the persons or corporations owning to the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under Title VII, Part III, Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases.

Not to use streets, alleys, or water in cities or towns, except by a two thirds vote of the city or town authorities.

SEC. 470. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same

is granted by a two-thirds vote of the town or city authority from which the right must emanate.

SEC. 471. *Omitted.*

COMMISSIONERS' NOTE: The above section was repealed by an act of the legislature, approved April 1, 1878 (See Stats. 1877-78, 84), and for that reason has been here omitted.

When crossing railroads or highways, how other lands are acquired.

SEC. 472. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in Title VII, Part III, Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation.

May consolidate. Publication of notice. Copy to be filed.

SEC. 473. Two or more railroad corporations may consolidate their capital stock, debts, property, assets, and franchises in such manner as may be agreed upon by their respective boards of directors; no such amalgamation or consolidation must take place without the written consent of the holders of three fourths in value of all the stock of each corporation; and no such amalgamation or consolidation must in any way relieve such corporation, or the stockholders thereof, from any and all just liabilities. In case of such amalgamation or consolidation, due notice of the same must be given, by advertisement for one month in at least one newspaper in each county, if there be one published therein, into or through which such roads run, and also for the same length of time in one paper published in Sacramento, one paper published in Los Angeles, and in two papers published in San Francisco; and when the consolidation and amalgamation is completed, a copy of the new articles of incorporation must be filed in the office of the secretary of state.

COMMISSIONERS' NOTE: The amendment to this section is the same as that suggested to section 450, *ante*—viz., causing the publication to be made also in a newspaper published in Los Angeles.

May contract with one another.

SEC. 473*a*. Railroad corporations doing business in this state and organized under any law of this state, or the United

States, or of any state or territory thereof, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad.

COMMISSIONERS' NOTE: This section constituted section 2 of "An act permitting and authorizing railway and other corporations organized under the laws of this state, or of any state or territory of the United States of America, or any act of congress of the United States of America, to do business in this state on equal terms," approved April 3, 1880, (Stats. 1880, 231). Section 1 of said act is hereafter incorporated herein as section 496*b*.

State lands granted for use of.

SEC. 474. There is granted to every railroad corporation the right of way for the location, construction, and maintenance of their necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands of the state, not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts, or for the protection thereof, not in any case to exceed two hundred feet in width.

Same; not to embrace certain lands.

SEC. 475. The grants mentioned in the preceding section do not apply to public lands of the state within the corporate limits of towns and cities, or within three miles thereof.

Wood, stone, and earth may be taken from state lands.

SEC. 476. The right to take from any of the lands belonging to the state, adjacent to works of the corporation, all materials, such as wood, stone, and earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of its works and adjuncts, is granted to such corporations.

Lands revert to state, when.

SEC. 477. If any corporation receiving state lands or appurtenances thereunder is dissolved, ceases to exist, is discontinued, or the route or line of its work is so changed as not to cover or cross the lands selected, or the use of the lands selected is abandoned, such selected lands revert, and the title thereto is reinvested in the state or its grantees, free from all such uses.

Selections made, how proved and certified to.

SEC. 478. When any selection of the right of way, or land for an adjunct to the works of a railroad corporation, is made by any corporation, the secretary thereof must transmit to the

surveyor-general, controller of state, and recorder of the county in which the selected lands are situate, a plat of the lands so selected, giving the extent thereof and uses for which the same is claimed or desired, duly verified to be correct; and, if approved, the surveyor-general must so indorse the plat, and issue to the corporation a permit to use the same, unless, on petition properly presented to the court, a review is had and such use prohibited.

CHAPTER III.

BUSINESS, HOW CONDUCTED—MISCELLANEOUS PROVISIONS.

Section 479. Checks to be affixed to all baggage. Damages.
480. Annual report to be verified. Form of report.
481. Must furnish sufficient accommodations.
482. Same; damages for refusal.
483. Must furnish room inside passenger cars, and be responsible for damages occurring on freight and other cars.
484. Must post printed regulations, and not responsible for damages in violation of rules.
485. Fences. Damages.
486. Bell, and other regulations of trains. Penalty.
487. Passengers may be expelled, where and when.
488. Officers and employés must wear badge.
489. Rates.
490. Passenger tickets, how issued. Good for six months.
491. Pattern of iron to be used.
494. Operation of railroads, or forfeiture. Proviso.
495. Prevention of operation.
496. Duty of railroad commissioners.
496*a*. Authorized to use steam, electricity, compressed air, or all.
496*b*. Equal terms for all railway corporations.

Checks to be affixed to all baggage. Damages.

SEC. 479. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employé of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employé of the railroad corporation, he may recover the value thereof from the corporation.

Annual report to be verified. Form of report.

SEC. 480. Every railroad corporation must make an annual report to the secretary of state, or other officer designated by

law, of its operations for each year, ending on the thirty-first day of December, verified by the oaths of the president or acting superintendent of operations, the secretary and treasurer of such corporation, and file it in the office of the secretary of state, or such other designated officer, by the twentieth day of February, which must state:

1. The capital stock, and the amount thereof actually paid in;
2. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and cars, respectively;
3. The amount and nature of its indebtedness, and the amount due the corporation;
4. The amount received from the transportation of passengers, property, mails, and express matter, and from other sources;
5. The amount of freight, specifying the quantity in tons;
6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such road;
7. The number and amount of dividends, and when paid;
8. The number of engine-houses and shops, of engines and cars, and their character.

Must furnish sufficient accommodations.

SEC. 481. Every such corporation must start and run their cars, for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation, at the place of starting, at the junction of other railroads, and at sidings and stopping-places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

Same; damages for refusal.

SEC. 482. In case of refusal by such corporation or their agents so to take or transport any passengers, or property, or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

Must furnish room inside passenger cars, and be responsible for damages occurring on freight and other cars.

SEC. 483. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

Must post printed regulations, and not responsible for damages in violation of rules.

SEC. 484. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by an officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

Fences. Damages.

SEC. 485. Railroad corporations must make and maintain a good and sufficient fence on either or both sides of their track and property. In case they do not make and maintain such fence, if their engine or car shall kill or maim any cattle or other domestic animals upon their line of road which passes through or along the property of the owner thereof, they must pay to the owner of such cattle or other domestic animals a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. Railroad corporations paying to the owner of the land through or along which their road is located an agreed price for making and maintaining such fence, or paying the cost of such fence, with the award of damages allowed for the right of way for such railroad, are relieved and exonerated from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence, and the owners of such animals are responsible for any damages or loss which may accrue to such corporation from such animals being upon their railroad track, resulting from the non-construction of such fence, unless it is shown that such

loss or damage occurred through the negligence or fault of the corporation, its officers, agents or employés.

Bell, and other regulations of trains. Penalty.

SEC. 486. A bell, of at least twenty pounds weight, must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, trains, or cars, when the provisions of this section are not complied with.

Passenger may be expelled, where and when.

SEC. 487. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employés of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping-place, or near any dwelling-house, on stopping the train.

Officers and employés must wear badge.

SEC. 488. Every conductor, baggagemaster, engineer, brakeman, or other employé, of any railroad corporation, employed on a passenger train, or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge, indicating his office or station, and the initial letters of the name of the corporation by which he is employed; no collector or conductor, without such badge, is authorized to demand or to receive from any passenger, any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employé, without such badge, has any authority to meddle or interfere with any passenger or property.

Rates.

SEC. 489. Whenever the board of railroad commissioners, in the discharge of its duties, shall establish or adopt rates of charges for the transportation of its passengers and freight, pursuant to the provisions of the constitution, said board shall

serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, co-partnership, company, or corporation affected thereby; and upon such service it shall be the duty of such person, co-partnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station-houses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during business hours. Said board shall also make such further publication thereof as they deem proper and necessary for the public good. If the party to be served be a corporation, such service may be made upon the president, vice-president, secretary, or managing agent thereof, and if a co-partnership, upon any partner thereof. The rates of charges established or adopted by said board, pursuant to the constitution and the laws of this state, shall go into force and effect on the twentieth day after service of said schedule or rates, upon the person, co-partnership, company, or corporation affected thereby, as hereinbefore provided.

COMMISSIONERS' NOTE: The supreme court having held in the case of *Robinson* vs. *Southern Pacific Co.*, 105 Cal. 526, that section 489 was repealed by the provisions of section 22, of Article XII of the constitution, creating and granting powers to the railroad commission, said section is here omitted, and section 11 of said act, governing the adoption of rates and charges by the board of railroad commissioners. (Stats. 1880, 45), is inserted in lieu thereof.

Passenger tickets, how issued; good for six months.

SEC. 490. Every railroad corporation must provide, and, on being tendered the fare therefor fixed as provided by law, furnish to every person desiring a passage on their passenger cars a ticket which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

COMMISSIONERS' NOTE: The words "in the preceding section" are omitted and the words "by law" inserted in lieu thereof, because of the repeal of section 489, as above stated.

Character of iron to be used.

SEC. 491. All railroads, other than street railroads and those used exclusively for carrying freight or for mining purposes,

built by corporations organized under this chapter, must be constructed of the best quality of iron or steel rails, known as T or H rail, or other pattern of equal utility.

SEC. 492. *Omitted.*

SEC. 493. *Omitted.*

COMMISSIONERS' NOTE: Sections 492 and 493 have been transposed to the beginning of the title on railroad corporations, and both incorported in section 453*z*, *ante*. See note to said section.

Operation of railroads, or forfeiture. Proviso.

SEC. 494. From and after the completion of any railroad, or the completion of such portion thereof capable of being operated, it shall be the duty of the corporation or individual owning the same, to operate it; and upon the failure of said corporation or individual so owning said road to keep the same, or any part thereof, in full operation for the period of six months, its or his right to operate the same, in whole or in part, as the case may be, shall be forfeited; and the lands occupied for the purposes of its or his road, so far as the same shall not be operated, shall revert to the original owners, or their successors in interest. A railroad shall be deemed to be in full operation when one passenger train, or one mixed train, is run over it once each day in each direction, and a sufficient number of freight trains to accommodate the traffic on said road; *provided, however*, that all railroads operated in this State whose lines of road are wholly constructed at an elevation of five thousand feet, or more, above the level of the sea, shall only be required to maintain and operate their roads, or to run passenger or freight cars thereon, between the fifteenth day of May and the fifteenth day of October in each year.

COMMISSIONERS' NOTE: This section was originally section 1 of an act of April 15, 1880, compelling corporations or individuals owning railroads to operate the same (Stats. 1880, 43); and an act of February 9, 1897, providing that certain railroads need not be operated between the dates of May 15th and October 15th, when said railroad was at an elevation of at least five thousand feet. (Stats. 1897, 5.)

Prevention of operation.

SEC. 495. The chapter shall not be construed to apply to a case where the operation of the road is prevented by the act of God, nor to a case where the operation of said road, together with its branch or trunk lines, does not yield income sufficient to defray the expenses of maintaining and operating the same in connection with its said branch or trunk lines.

Duty of railroad commissioners.

SEC. 496. The railroad commissioners of the state of California shall have the power to examine and determine the question whether said road, together with its said branch and trunk lines, does or does not yield income sufficient to operate the same.

COMMISSIONERS' NOTE: The two preceding sections are sections 2 and 3 of an act of the legislature of 1880, compelling railroad corporations to operate their roads (Stats. 1880, 44) deemed by the commissioners to go properly in the code at this point.

Authorized to use steam, electricity, compressed air, or all.

SEC. 496*a*. Every railroad company now or hereafter engaged in the business of operating a railroad or railroads, by steam motive power, in the state of California, is hereby authorized and empowered to use electricity, compressed air, or steam, or electricity, compressed air, and steam, for the purpose of propelling cars or trains on such railroad or railroads, or upon any portion thereof; *provided*, that in incorporated cities and towns authority must first be obtained from the legislative authority of such city or town.

COMMISSIONERS' NOTE: The above section is section 1 of an act of the legislature of 1893 (Stats. 1893, 208), here added to the code with some amendments. The amendments consist in allowing the use of compressed air, and in striking out the limitation as to the number of inhabitants, also the change will be noted as to the manner in which authority to make such change must be obtained. The amendment as to the population is rendered necessary by the fact that there is no class of cities of that number of inhabitants. (See *Denman* vs. *Broderick*, 11 Cal. 96.) The amendment of 1897 to the law providing for the granting of franchises, requires a bid to be made of a certain percentage of the gross receipts on the part of the applicant for the franchise. The commissioners consider that it would be practically impossible to apply such a provision to this section.

Equal terms for all railroad corporations.

SEC. 496*b*. Every railroad corporation, and every corporation organized for the purpose of carrying freight or passengers, which has been or may be created or organized under or by virtue of any of the laws of any state or territory of the United States of America, or any act of congress of the United States of America, may hereafter build railways, exercise the right of eminent domain, or do or transact any other business which such corporation might, if the same had been created or organized under or by virtue of the laws of this state, having the same rights, privileges, and immunities, and subject to the same laws, penalties, obligations, and burdens, as though said corporation had been created by or organized under the laws of the state of California.

COMMISSIONERS' NOTE: Section 496*b* codifies section 1 of an act approved April 3, 1880 (Stats. 1880, p. 21; Bank, ed., 114) authorizing railroad

and other corporations to do business in this state on equal terms. A statute approved February 27, 1893 (Statutes 1893, 44), requires city, city and county, or town authorities to exact from persons or corporations seeking permission to lay "railroad tracks" through the streets of any incorporated city, city and county, or town, a satisfactory promise and undertaking to permit United States mail carriers, in the actual discharge of their duty, to ride on the cars of "such railroad," without paying fare, and also provides "that all such permissions and franchises shall be subject to all other provisions of the laws of this state, applicable to street railroads in general," etc. The Commissioners have construed this act to apply to street railroads only, and the same is incorporated as section 501 *post*, Title IV.

CHAPTER IV.

BOARD OF RAILROAD COMMISSIONERS.

Section 496*c*. Board of railroad commissioners.
496*d*. Salaries, expenses.
496*e*. Free passes
496*f*. Duties of attorney-general and district attorney
496*g*. Location of office, sessions of board.
496*h*. Seal.
496*i*. Powers of board.
496*j*. Powers of officers.
496*k*. Complaints and decisions to be in writing.
496*l*. When may sue.
496*m*. Rates.
496*n*. Jurisdiction.
496*o*. Definition of term "transportation companies."
496*p*. Salaries, how paid.

Board of railroad commisioners.

SEC. 496*c*. The three persons elected railroad commissioners, pursuant to the provisions of section 22 of Article XII of the constitution of this state, constitute, and shall be known and designated as, the "board of railroad commissioners of the state of California." They shall have power to elect one of their number president of said board, to appoint a secretary, to appoint a bailiff, who shall perform the duties of "janitor"; also, to employ a stenographer whenever they may deem it expedient.

Salaries, expenses.

SEC. 496*d*. The salary of each commissioner shall be four thousand dollars per annum; the salary of the secretary shall be twenty-four hundred dollars per annum; the salary of the bailiff shall be twelve hundred dollars per annum; such salaries to be paid by the state of California in the same manner as the salaries of state officers are paid. The stenographer shall receive a reasonable compensation for his services, the amount to be fixed by the state board of examiners, and paid

by the state. Said commissioners, and the persons in their official employment, when traveling in the performance of their official duties, shall have their traveling expenses other than transportation paid, the amounts to be passed on by the state board of examiners, and paid by the state. Said board of railroad commissioners shall be allowed one hundred dollars per month for office rent, and fifty dollars per month for fuel, lights, postage, expressage, subscription to publications upon the subject of transportation, and other incidental expenses, to be paid by the state; *provided*, that all moneys remaining unexpended at the expiration of each fiscal year shall be returned to the state treasury. Said board is further authorized to expend not to exceed four hundred dollars for office furniture and fixtures, to be paid by the state. The state shall furnish said board with all necessary stationery and printing, upon requisitions signed by the president of said board.

Free passes.

SEC. 496*e*. Said commissioners, and the persons in their official employment, shall, when in the performance of their official duties, have the right to pass free of charge on all railroads, steamers, ships, vessels, and boats, and on all vehicles employed in or by any railroad or other transportation company engaged in the transportation of freight and passengers within this state.

Duties of attorney-general and district attorney.

SEC. 496*f*. It shall be the duty of the attorney-general, and the district attorney in every county, on request of said board, to institute and prosecute, and to appear and defend for said board, in any and all suits and proceedings which they or either of them shall be requested by said board to institute and prosecute, and to appear in all suits and proceedings in which the board is a party, which shall have precedence over all other business except criminal business; *provided*, that said board shall have the power to employ additional counsel to assist said attorney-general, or said district attorney, or otherwise, when in their judgment the exigencies of the case may so require. The fees and expenses of said additional counsel to be determined by the state board of examiners, and paid by the state.

Location of office. Sessions of board.

SEC. 496*g*. The office of said board shall be in the city of San Francisco. Said office shall always be open (legal holi-

days and non-judicial days excepted). The board shall hold its sessions at least once a month in said city of San Francisco, and at such other times and such other places within this state as may be expedient. The sessions of said board shall be public, and when held at a place other than at the office in San Francisco, notice thereof shall be published once a week for two successive weeks before the commencement of such session, in a newspaper published in the county where such session is to be held; and if no newspaper is published in such county, then in a newspaper published in an adjacent county. Such publication to be paid by the state in the manner as other publications authorized by law are paid.

Seal.

SEC. 496*h*. The board shall have a seal, to be devised by its members, or a majority thereof. Such seal shall have the following seal surrounding it: "Railroad commission, state of California." The seal shall be affixed only to, first, writs; second, authentications of a copy of a record or other proceeding, or copy of a document on file in the office of said commission.

Powers of board.

SEC. 496*i*. The process issued by said board shall extend to all parts of the state. The board shall have power to issue writs of summons and of subpœna in like manner as courts of record.

Powers of officers.

SEC. 496*j*. The secretary of said board shall issue all processes and notices required to be issued, and do and perform such other duties as the board may prescribe. The bailiff shall preserve order during the sessions of said board, and shall have authority to make arrests for disturbances. He shall also have authority, and it shall be his duty, to serve all process, orders, and notices issued by said board, when directed by the president, and make return of the same.

Complaints and decisions to be in writing.

SEC. 496*k*. All complaints before said board shall be in writing and under oath. All decisions of said board shall be given in writing, and the grounds of the decision shall be stated. A record of the proceedings of said board shall be kept, and the evidence of persons appearing before said board shall be preserved.

When may sue.

SEC. 496*l*. Whenever the board shall render any decision within the purview and pursuant to the authority vested in said board by section 22 of Article XII of the constitution, said board, or the person, co-partnership, company, or corporation making the complaint upon which such decision was rendered, is authorized to sue upon such decision in any court of competent jurisdiction in this state.

Rates.

SEC. 496*m*. Whenever said board, in the discharge of its duties, shall establish or adopt rates of charges for the transportation of passengers and freight, pursuant to the provisions of the constitution, said board shall serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, co-partnership, company, or corporation affected thereby; and upon such service, it shall be the duty of such person, co-partnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station-houses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours. Said board shall also make such further publication thereof as they shall deem proper and necessary for the public good. If the party to be served, as hereinbefore provided, be a corporation, such service may be made upon the president, vice-president, secretary, or managing agent thereof, and if a co-partnership, upon any partner thereof. The rates of charges established or adopted by said board, pursuant to the constitution and this code, shall go into force and effect on the twentieth day after service of said schedule, or changes in rates, upon the person, co-partnership, company, or corporation affected thereby, as hereinbefore provided.

Jurisdiction.

SEC. 496*n*. When jurisdiction is, by the constitution, conferred on the board of railroad commissioners, all the means necessary to carry it into effect are also conferred on said board, and when in the exercise of jurisdiction within the purview of the authority conferred on said board by the constitution the course of proceedings be not specifically pointed out, any suitable process or mode of proceeding may be adopted by the board which may appear most conformable to the spirit of the constitution.

Definition of term "transportation companies."

SEC. 496*o*. The term "transportation companies" shall be deemed to mean and include:

1. All companies owning and operating railroads (other than street railroads) within this state;

2. All companies owning and operating steamships engaged in the transportation of freight or passengers from and to ports within this state;

3. All companies owning and operating steamboats used in transporting freight or passengers upon the rivers or inland waters of this state.

The word "company," as used in this code, shall be deemed to mean and include corporations, associations, partnerships, trustees, agents, assignees, and individuals. Whenever any railroad company owns and operates in connection with its road, and for the purpose of transporting its cars, freight, or passengers, any steamer or other water-craft, such steamer or other water-craft shall be deemed part of its said road. Whenever any steamship or steamboat company owns and operates any barge, canal-boat, steamer, tug, ferry-boat, or lighter, in connection with its ships or boats, the thing so owned and operated shall be deemed to be part of its main line.

Salaries, how paid.

SEC. 496*p*. The salaries of the commissioners, secretary, bailiff, and all other officers and attachés in any manner employed by the board of commissioners, and all expenses of every kind created under this title, shall be paid out of any money in the general fund not otherwise appropriated, and the state controller is hereby authorized and directed to draw his warrants from time to time for such purposes, and the state treasurer is hereby authorized and directed to pay the same.

COMMISSIONERS' NOTE: The foregoing sections 496c to 496*p*, inclusive, were all embodied in the "Act to organize and define the powers of the board of railroad commissioners," approved April 15, 1880 (Stats. 1880, 45), and said act is here incorporated, as past; except that section 13 thereof, providing that the said board, immediately after entering upon the performance of its duties, should demand and receive from the transportation commissioner, appointed under the act of April 1, 1878 (Stats. 1877-78, 969), all public property belonging to the office of said transportation commissioner, is omitted, there being no longer any reason for its existence or retention; and except also section 11 of said act (Stats. 1880, 45), which is incorporated in section 489, Civil Code.

TITLE IV.

STREET RAILROAD CORPORATIONS.

Section 497. Authority to lay street railroad track, how obtained. Motive power.
497*a*. Validity of authority heretofore granted to propel cars by electricity or compressed air.
498. Additional conditions on grant of right of way.
499. Two corporations may use the same track.
500. Crossing tracks.
501. Rates of fare. Violation and forfeiture.
501*a*. Construction of cars, rate of speed, etc.
502. Time allowed for completion of work of laying down track.
503. Cities may make further regulations and rules.
504. Violation of section 501, and forfeiture.
505. Certain street railroads must furnish tickets. Forfeiture.
506. Prima facie evidence of agency.
507. Rights reserved to municipal corporation.
508. License to be paid city or town.
509. Track for grading purposes.
510. What provisions of Title III govern street railroads.
511. Title applicable to natural persons alike with corporations.

Authority to lay street railroad track, how obtained. Motive power.

SEC. 497. Authority to lay railroad tracks through the streets and public highways of any incorporated city, city and county, or town, may be obtained, for a term not exceeding fifty years, from the trustees, council, or other body to whom is intrusted the government of the city, city and county, or town, under such restriction and limitations, and upon such terms and payment of license tax, as the city, city and county, or town authority may provide. In no case must permission be granted to propel cars upon such tracks otherwise than by electricity, compressed air, horses, mules, or by wire ropes running under the streets and moved by stationary engines, unless for special reasons in this title hereinafter mentioned; *provided, however*, that such board or body in granting the right, or at any time after the same is granted, to use electricity or any other of said modes, shall have power to impose such terms, restrictions, and limitations as to the use of streets and the construction and mode of operating such electric and other roads as may, by such board or body, be deemed for the public safety or welfare.

COMMISSIONERS' NOTE. The amendment to this section consists in adding "compressed air" as a motive power.

Validity of authority heretofore granted to propel cars by electricity or compressed air.

SEC. 497*a*. In all cases where, prior to February twenty-fifth, eighteen hundred and ninety-one, authority to lay

railroad tracks through streets or public highways of any incorporated city, city and county, or town, has been obtained for a term of years, not exceeding fifty, from the trustees, council, or other body to whom was entrusted the government of the city, city and county, or town, and permission has been granted by such governing body to propel cars on such tracks by electricity, such authority and permission shall be, and shall be held and deemed, as valid and legal as the same would have been if, at the time of the obtaining thereof, section 497 of this code had expressly declared that permission might be given to propel cars upon such tracks by electricity, as well as by horses, mules, or wire ropes running under the streets and propelled by stationary steam engines; *provided*, that all such permission or franchises heretofore granted shall be subject to the provisions of the laws of this state applicable to street railroads in general, and subject to the same regulations from city, city and county, and town authorities as if the said franchises were thereafter granted.

COMMISSIONERS' NOTE: This was section 1 of an act to make valid permission to propel cars by electricity, which authority was granted prior to the passage of said act. (See Stats. 1891, 12.)

Additional conditions on grant of right of way.

SEC. 498. The city or town authorities, in granting the right of way to street railroad corporations, in addition to the restrictions which they are authorized to impose, must require a strict compliance with the following conditions, except in the case of prismoidal or other elevated railways. In such cases, said railway shall be required to be constructed in such manner as will present the least obstruction to the freedom of the streets in which it may be erected when allowed by the granting power. First, to construct their tracks on those portions of streets designated in the ordinance granting the right, which must be, as nearly as may be, in the middle thereof. Second, to plank, pave, or macadamize the entire length of the street used by their track, between the rails, and for two feet on each side thereof, and between the tracks if there be more than one, and to keep the same constantly in repair, flush with the street, and with good crossings. Third, that the tracks must not be more than five feet wide within the rails, and must have a space between them sufficient to allow the cars to pass each other freely.

Two corporations may use the same track.

SEC. 499. Two lines of street railway, operated under different managements, may be permitted to use the same street,

each paying an equal portion for the construction of the tracks and appurtenances used by said railways jointly; but in no case must two lines of street railway, operated under different managements, occupy and use the same street or tracks for a distance of more than five blocks consecutively.

Crossing tracks.

SEC. 500. Any proposed railway track may be permitted to cross any track already constructed, the crossing being made as provided in Chapter II, Title III, of this part. In laying down the track and preparing therefor, not more than one block must be obstructed at any one time, nor for a longer period than ten working days.

Rates of fare. Violation and forfeiture.

SEC. 501. The rates of fare on the cars must not exceed ten cents for one fare, for any distance under three miles; *provided*, that no street railroad in any municipal corporation of the first or second class shall be allowed to charge or collect a higher rate of fare than five cents for each passenger per trip of any distance in one direction, either going or coming, along any part of the whole length of the road or its connections; *and provided, further*, that all mail-carriers in the employ of the United States government shall be permitted, at all times while engaged in the actual discharge of their duties, to ride on the cars of any street railroad without paying any sum of money whatever for fare or otherwise.

COMMISSIONERS' NOTE: This section contains a portion of the original section 501; all of section 1 of the act regulating street railroad fares in cities or towns of more than one hundred thousand inhabitants, approved January 1, 1878 (Stats. 1877-78, 18); and a portion of the act requiring municipal authorities to exact from persons or corporations seeking to lay railroad tracks through the streets of any incorporated city, city and county, or town, a satisfactory undertaking to permit mail-carriers to ride on the cars of such railroad without paying fare (Stats. 1893, 44). See Political Code, section ——. For forfeiture upon violation of provisions of this section, see section 504, *post*. Rates of fare for railroad corporations, see Political Code, sections ——.

Construction of cars, rate of speed, etc.

SEC. 501*a*. The cars must be of the most approved construction for comfort and convenience of passengers, and provided with brakes to stop the same, when required. The rate of speed must not be greater than eight miles per hour. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense.

COMMISSIONERS' NOTE: This section is that portion of original section 501, not incorporated in the preceding section.

Time allowed for completion of work of laying down track.

SEC. 502. Work to construct the railroad must be commenced in good faith within not more than one year from the date of the taking effect of the ordinance granting the right of way, and said work must be completed within not more than three years after the taking effect of such ordinance; *provided*, that the governing body of such municipal corporation at the time of granting said right of way shall have the power to fix the time for either the commencing or completion, or both, of said work; not, however, to a time less than six months for commencing, and not less than eighteen months for completing the same. A failure to comply with either of the foregoing provisions of this section, or with either of the provisions of the ordinance granting said right of way, works a forfeiture of the right of way, and also of the franchise, unless the uncompleted portion is abandoned by the person or corporation to whom said right of way is granted, with the consent of the authorities granting the right of way, such abandonment and consent to be in writing. The authority granting the right of way shall have the power to grant an extension of time for the completion of said work, if it appear that the work has been commenced within the time fixed and prosecuted in good faith; but no extension of time shall be granted for the commencement of said work, and shall not be granted for more than one year for the completion of the same. All extensions of time shall be in writing, and made a matter of record in the municipality.

COMMISSIONERS' NOTE: The provision contained in the amendment of 1895 (Stats. 1895, 17) is here omitted, as the lapse of time rendered its retention useless.

Cities may make further regulations and rules.

SEC. 503. Cities and towns in or through which street railroads run may make such further regulations for the government of such street railroads as may be necessary to a full enjoyment of the franchise and the enforcement of the conditions provided herein.

Violation of section 501, and forfeiture.

SEC. 504. Every violation of the provisions of section 501 shall subject the owner or owners of the street railroad violating the same to a forfeiture to the person so unlawfully charged or paying more than is therein allowed to be charged, the sum of two hundred and fifty dollars for each and every instance when such unlawful charge is made or collected, to be recov-

ered by suit in any court of competent jurisdiction; such causes of action shall be assignable, and the action may be maintained by the assignee in his own name, and several causes of action arising out of unlawful charges or collections from different persons may be vested in the assignee and united in the same action.

COMMISSIONERS' NOTE: The similarity of the provisions of the above section to those of the original section 504 renders the retention of both undesirable. The statute from which this section is taken, being the later expression of the legislative will, is adopted for incorporation here instead of said original section 504. This is taken from section 2 of an act approved January 1, 1878 (Stats. 1877-78, 18), section 1 thereof having been incorporated in section 501, *ante*.

Certain street railroads must furnish tickets. Forfeiture.

SEC. 505. Every street railroad corporation must provide, and, on request, furnish to all persons desiring a passage on its cars, any required quantity of passenger tickets or checks, each to be good for one ride. Any corporation failing to provide and furnish tickets or checks to any person desiring to purchase the same at not exceeding the rate hereinbefore prescribed, shall forfeit to such person the sum of two hundred dollars, to be recovered as provided in the preceding section; *provided*, that the provisions of this section shall not apply to such street railroad corporations as charge but five cents fare.

Prima facie evidence of agency.

SEC. 506. Upon the trial of an action for any of the sums forfeited, as provided in sections 501, 504, and 505, proof that the person demanding or receiving the money as fare, or for the sale of the ticket or check, was, at the time, of making the demand or receiving the money, engaged in an office of the corporation, or vehicle belonging to the corporation, shall be prima facie evidence that such person was the agent, servant, or employé of the corporation, to receive the money and give the ticket or check mentioned.

Rights reserved to municipal corporations.

SEC. 507. In every grant to construct street railroads, the right to grade, sewer, pave, macadamize, or otherwise improve, alter or repair the streets or highways, is reserved to the municipality, and cannot be alienated or impaired; such work to be done so as to obstruct the railroad as little as possible; and, if required, the owner of such railroad must shift its rails so as to avoid the obstructions made thereby.

COMMISSIONERS' NOTE: The amendments to this section consist in striking out the word "corporation" where it occurs, and inserting in place thereof in the first instance the word "municipality," and in the second, "owner of such railroad." They are self-explanatory.

License to be paid to city or town.

SEC. 508. Each street railroad corporation must pay to the authorities of the city, town, county, or city and county, as a license upon each car, such sum as the authorities may fix, not exceeding fifty dollars per annum. Where any street railroad connects or runs through two or more cities or towns, a proportionate or equal share of such license tax must be paid to each of the cities or towns; and no such license tax is due the county authorities where the same is paid to any city or town authority.

COMMISSIONERS' NOTE: The words "in the city of San Francisco, nor more than twenty-five dollars per annum in other cities or towns," are stricken out to make said section conform to section 25, Article IV, and section 11, Article I, of the constitution. (*County of San Luis Obispo* vs. *Graves*, 84 Cal. 71.)

Track for grading purposes.

SEC. 509. The right to lay down a track for grading purposes, and maintain the same for a period not to exceed three years, may be granted by the corporate authorities of any city, or town, or city and county, or supervisors of any city and county, but no such track must remain more than three years upon any one street; and it must be laid level with the street, and must be operated under such restrictions as not to interfere with the use of the street by the public. The corporate authorities of any city or town, or city and county, may grant the right to use steam or any other motive power in propelling the cars used in such grading track, when public convenience or utility demands it, but the reasons therefor must be set forth in the ordinance, and the right to rescind the ordinance at any time reserved.

What provisions of Title III govern street railroads.

SEC. 510. Street railroads are governed by the provisions of Title III of this part, so far as they are applicable, unless such railroads are therein specially excepted.

Title applicable to natural persons alike with corporations.

SEC. 511. When a street railroad is constructed, owned, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations.

TITLE V.

WAGON ROAD CORPORATIONS.

CHAPTER I. WAGON ROAD CORPORATIONS. [512–523.]
II. RELATING TO THE GRANTING BY COUNTIES AND MUNICIPALITIES OF FRANCHISES FOR THE CONSTRUCTION OF PATHS AND ROADS FOR THE USE OF BICYCLES AND OTHER HORSELESS VEHICLES. [524.]

CHAPTER I.

WAGON ROAD CORPORATIONS.

Section 512. Three commissioners to act with surveyor in laying out road.
513. Survey and map to be filed and approved by supervisors.
514. Tolls, etc., to be collected. Penalty for taking unlawful tolls.
515. No tolls to be charged on highways or public roads.
516. Rates of toll to be posted at gate.
517. Toll-gatherer may detain persons until they pay toll.
518. Toll-gatherer not to detain any person unnecessarily.
519. Persons avoiding tolls to pay five dollars.
520. Penalty for trespass on property of corporation.
521. When capital invested is repaid, tolls to be reduced, etc.
522. May mortgage and hypothecate property of the corporation.
523. This title applies to natural persons as well as corporations.

Three commissioners to act with surveyor in laying out road.

SEC. 512. Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of supervisors of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the supervisors, as provided in the succeeding section.

Survey and map to be filed and approved by supervisors.

SEC. 513. When the route is surveyed a map thereof must be submitted to and filed with the board of supervisors of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the supervisors must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands

and highways over which the survey runs; but the board of supervisors must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as they were before the appropriation thereof; and must so construct all crossings of public highways over, and by its road, and its toll gates, as not to hinder or obstruct the use of the same.

Tolls, etc., to be collected. Penalty for taking unlawful tolls.

SEC. 514. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of supervisors of the proper county through which the road passes, or in which the ferry or bridge is situate. But in no case must the tolls be more than sufficient to pay fifteen per cent, nor less than ten per cent per annum, on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges, or ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages.

COMMISSIONERS' NOTE: The exception in this section has been stricken out, in order to harmonize the same with the constitution.

No tolls to be charged on highways or public roads.

SEC. 515. When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or any one transporting property over the same.

Rates of toll to be posted at gate.

SEC. 516. The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list of the rates of toll levied and demanded.

Toll-gatherer may detain persons until they pay toll.

SEC. 517. Each toll-gatherer may prevent from passing through his gate persons leading, riding, or driving animals or vehicles, subject to toll, until they shall have paid, respectively, the tolls authorized to be collected.

COMMISSIONERS' NOTE: This section has been amended by adding thereto the word "riding" after the word "leading."

Toll-gatherer not to detain any person unnecessarily.

SEC. 518. Every toll-gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved.

Persons avoiding tolls to pay five dollars.

SEC. 519. Every person who, to avoid the payment of the legal toll, with his team, vehicle, or horse, turns out of the wagon, turnpike, or plank road, or passes any gate thereon or ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

Penalty for trespass on property of corporation.

SEC. 520. Every person who:

1. Willfully breaks, cuts down, defaces, or injures any milestone or post on any wagon, turnpike, or plank road; or,

2. Willfully breaks or throws down any gate on such road; or,

3. Digs up or injures any part of such road, or anything thereunto belonging; or,

4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll; for each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

When capital invested is repaid, tolls to be reduced, etc.

SEC. 521. The entire revenue derived from the road shall be appropriated: first, to repayment to the corporation of the cost of the construction of its road, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and, second, to the payment of the dividend among its stockholders as provided in section 514. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay said dividend, and incidental expenses, and to keep the road in good repair.

May mortgage and hypothecate property of the corporation.

SEC. 522. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair their road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two thirds of the capital stock subscribed.

This title applies to natural persons as well as corporations.

SEC. 523. When a wagon, turnpike, or plank road is constructed, owned or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations.

CHAPTER II.

RELATING TO THE GRANTING BY COUNTIES AND MUNICIPALITIES OF FRANCHISES FOR THE CONSTRUCTION OF PATHS AND ROADS FOR THE USE OF BICYCLES AND OTHER HORSELESS VEHICLES.

Section 524. Franchises for roads for bicycles and horseless vehicles.

Franchises for roads for bicycles and horseless vehicles.

SEC. 524. The legislative or other body to whom is entrusted the government of any county, city and county, city, or town, may, under such regulations, restrictions, and limitations as it may provide, subject to existing laws, grant franchises for the construction of paths and roads, either on the surface, elevated, or depressed, on, over, across, or under the street and public highways of any such county, city and county, city, or town, for the use of bicycles, tricycles, motorcycles, and other like horseless vehicles, propelled by the rider, for a term not exceeding fifty years; *provided*, that in incorporated cities no franchise shall be granted for the purpose herein expressed, unless the consent in writing of the owners of a majority of the frontage upon the road or street along which said path or road is sought to be constructed, be first had and obtained, and filed with such legislative or governing body.

COMMISSIONERS' NOTE: The above chapter is an act of the legislature of 1897 (Stats. 1897, 191), here made a part of the code.

TITLE VI.

BRIDGE, FERRY, WHARF, CHUTE, AND PIER CORPORATIONS.

Section 528. Corporation to obtain license from supervisors.
529. In what contingencies corporate existence ceases.
530. President and secretary to make annual report, and what to contain. Damages for failing to report.
531. This title to apply to natural persons alike with corporations.

Corporation to obtain license from supervisors.

SEC. 528. No corporation must construct or take tolls on a bridge, ferry, wharf, chute, or pier until authority is granted

therefor by the supervisors, or other governing body having authority in that behalf.

COMMISSIONERS' NOTE: The amendment to the foregoing section is made in order to harmonize the same with section 2920 of the Political Code.

In what contingencies corporate existence ceases.

SEC. 529. Every such corporation ceases to be a body corporate:

1. If, within six months from filing its articles of incorporation, it has not obtained such authority from the board of supervisors, or other governing body having authority in that behalf; and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or pier, and actually expended thereon at least ten per cent of the capital stock of the corporation;

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute, or pier is not completed;

3. If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter;

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to establish it, or if at any time thereafter it ceases for a like term consecutively to perform the duties imposed by law.

COMMISSIONERS' NOTE: See note to preceding section.

President and secretary to make annual report, and what to contain. Damages for failing to report.

SEC. 530. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation must annually, under oath, report to the board of supervisors, or other governing body having authority in that behalf, of the county in which the articles of incorporation are filed:

1. The cost of constructing and providing all necessary appendages and appurtenances for their bridge, ferry, wharf, chute, or pier;

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses;

3. The amount of their capital stock, how much paid in, and how much actually expended thereof;

4. The amount received during the year for tolls, and from all other sources, stating each separately;

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred;

6. Such other facts and particulars respecting the business

of the corporation as the board of supervisors or other governing body having authority in that behalf may require.

This report the president and secretary must cause to be published for four weeks in a daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors or other governing body having authority in that behalf. A failure to make such report subjects the corporation to a penalty of two hundred dollars, and for every week permitted to elapse after such failure, an additional penalty of fifty dollars, payable in each case to the county from which the authority of the corporation was derived. All such cases must be reported by the board of supervisors, or other governing body having authority in that behalf, to the district attorney or city attorney, who must commence an action therefor.

COMMISSIONERS' NOTE: See note to section 529.

This title to apply to natural persons alike with corporations.

SEC. 531. When a bridge, ferry, wharf, chute, or pier is constructed, operated, or owned by a natural person, this title is applicable to such person in like manner as it is applicable to corporations.

TITLE VII.

TELEGRAPH AND TELEPHONE CORPORATIONS.

Section 536. May use right of way along waters, roads, and highways.
537. Persons liable for damages for injuring telegraph or telephone property.
538. Party guilty of willful and malicious injury, liable to one hundred times actual damages.
539. Conditions on which damage to subaqueous cable may be recovered.
540. May dispose of certain rights.

May use right of way along waters, roads, and highways.

SEC. 536. Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

Persons liable for damages for injuring telegraph or telephone property.

SEC. 537. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any

telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor, or otherwise, breaks, injures, or destroys the subaqueous cable of a telegraph or telephone corporation, subjects its owner to the damages hereinbefore specified.

Party guilty of willful and malicious injury, liable to one hundred times actual damages.

SEC. 538. Any person who willfully and maliciously does any injury to any telegraph or telephone property, mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

Conditions on which damage to subaqueous cable may be recovered.

SEC. 539. No telegraph or telephone corporation can recover damages for the breaking or injuring of any subaqueous telegraph or telephone cable, unless such corporation has previously erected on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable.

May dispose of certain rights.

SEC. 540. Any telegraph or telephone corporation may at any time, with the consent of the persons holding two thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise.

COMMISSIONERS' NOTE: The amendments to the five preceding sections define the rights of telephone companies.

TITLE VIII.

WATER AND CANAL CORPORATIONS AND WATER FRANCHISES.

CHAPTER I. FRANCHISES IN CITIES AND COUNTIES, CITIES AND TOWNS. [548–556*a*.]

II. FRANCHISES IN COUNTIES, OTHER THAN CITIES AND COUNTIES, CITIES AND TOWNS. [556*b*–556*n*.]

CHAPTER I.

FRANCHISES IN CITIES AND COUNTIES, CITIES AND TOWNS.

Section 548. Right of all persons and corporations to furnish municipalities with fresh water, subject to control of municipality
549. Right of way for such purpose.
550. Municipal corporations to fix water rates.
551. Annual statements to be made by water companies.
552. Additional statement.
553. Refusal to make statement a misdemeanor.
554. Copy of statement to be filed.
555. Rates to be equal.
556. Excess in charging rates forfeits franchise.
556*a*. Penalty to supervisors neglecting to enforce law.

Right of all persons and corporations to furnish municipalities with fresh water, subject to control of municipality.

SEC. 548. In any city and county, city, or town, where there are no public works owned and controlled by the municipality, for supplying the same with water, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this state, shall, under the direction of the superintendent of streets, town marshal, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets, thoroughfares, ways, and alleys thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and county, city, or town, and its inhabitants with fresh water for domestic and other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.

COMMISSIONERS' NOTE: The words "and water franchises" have been added to the title, and the title has been divided into two chapters to conform to legislative enactments adopted since the present constitution went into effect. Section 548 is a new section. The old section 548 is ineffective under section 19, Article XI, of the constitution. (See *People* vs. *Stevens*, 62 Cal. 209.) The new section conforms to the requirements of the constitution.

Right of way for such purpose.

SEC. 549. Every person, water or canal corporation must construct and keep in good repair, at all times, for public use, across their canal, flume, or water-pipe, all of the bridges that the board of supervisors of the county in which such canal is situated may require, the bridges being on the lines of public highways and necessary for public uses in connection with such highways; and all waterworks must be so laid and con-

structed under such reasonable direction as such board of supervisors may prescribe, as not to obstruct public highways.

COMMISSIONERS' NOTE: The old section 549 is stricken out, as it is rendered of no effect by section 1, Article XIV, of the constitution. (See *Spring Valley Waterworks* vs. *San Francisco*, 61 Cal. 3.)

Municipal corporations to fix water rates.

SEC. 550. The board of supervisors, town council, or other legislative body of any city and county, city, or town, are hereby authorized and empowered, and it is made their official duty, to annually fix the rates that shall be charged and collected by any person, company, association, or corporation for water furnished to any such city and county, city, or town, or the inhabitants thereof. Such rates shall be fixed at a regular or special session of such board or other legislative body, held during the month of February of each year, and shall take effect on the first day of July thereafter, and shall continue in full force and effect for the term of one year, and no longer.

COMMISSIONERS' NOTE: The old section 550 is stricken out, as its substance has been carried into new section 548 and new section 549, which is old section 551, amended to harmonize with new section 548.

Annual statements to be made by water companies.

SEC. 551. The board of supervisors, town council, or other legislative body of any city and county, city, or town, are hereby authorized, and it is hereby made their duty, at least thirty days prior to the fifteenth day of January of each year, to require, by ordinance or otherwise, any corporation, company, or person supplying water to such city and county, city, or town, or to the inhabitants thereof, to furnish to such board, or other governing body, in the month of January in each year, a detailed statement, verified by the oath of the president and secretary of such corporation or company, or of such person, as the case may be, showing the name of each water-rate payer, his or her place of residence, and the amount paid for water by each of such water-rate payers, during the year preceding the date of such payment, and also showing all revenue derived from all sources, and an itemized statement of expenditures made for supplying water during said time.

Additional statement.

SEC. 552. Accompanying the first statement made, as prescribed in section 551, every such corporation, company, or person shall furnish a detailed statement, verified in like manner as the statement mentioned in section 551 hereof, showing the amount of money actually expended annually, since com-

mencing business, in the purchase, construction, and maintenance, respectively, of the property necessary to the carrying on of its business, and also the gross cash receipts annually, for the same period, from all sources.

Refusal to make statement a misdemeanor.

SEC. 553. Every corporation, company, or person, who shall refuse or neglect to furnish the statements mentioned in sections 551 and 552, of this chapter, or either of them, or who shall furnish any false statements in relation thereto, within thirty days after having been required or requested to furnish the same as prescribed in sections 550, 551 and 552, of this chapter, shall be deemed guilty of a misdemeanor.

Copy of statement to be filed.

SEC. 554. Upon receiving the statements provided for in sections 551 and 552 of this chapter, the board of supervisors, town council, or other legislative body, shall cause a copy thereof to be made and filed in the office of the county recorder of such city and county, or of the county wherein such city or town is situated.

Rates to be equal.

SEC. 555. Rates for the furnishing of water shall be equal and uniform. There shall be no discriminations made between persons, or between persons and corporations, or as to the use of water for private and domestic, and public or municipal purposes; *provided*, that nothing herein shall be so construed as to allow any person, company, association, or corporation, to charge any person, corporation, or association anything for water furnished them, when, by any present law, such water is free.

Excess in charging rates forfeits franchise.

SEC. 556. Any person, company, association, or corporation charging, or attempting to charge and collect from the persons, corporations, or municipalities using water, any sum in excess of the rate fixed as hereinbefore designated, shall, upon the complaint of said board of supervisors, town council, or other legislative body thereof, or of any water-rate payer, upon conviction before any court of competent jurisdiction, forfeit the franchises and waterworks of such person, company, association, or corporation to the city and county, city, or town wherein the said water is furnished and used.

Penalty to supervisors neglecting to enforce law.

SEC. 556*a*. Any board of supervisors or other legislative body of any city and county, city, or town, which shall fail or refuse to perform any of the duties prescribed by this chapter, at the time and in the manner hereinbefore specified, shall be deemed guilty of malfeasance in office, and upon conviction thereof, at the suit of any interested party, in any court of competent jurisdiction, shall be removed from office.

COMMISSIONERS' NOTE: Sections 550 *et seq.* are found in the act of the legislature approved March 7, 1881 (Stats. 1881, 54), here made part of the code. Old section 552 is made section 556*n*, Chapter II, of this title, as it relates to the control of water other than in cities and towns.

CHAPTER II.

FRANCHISES IN COUNTIES, OTHER THAN CITIES AND COUNTIES, CITIES AND TOWNS.

Section 556*b*. Use of appropriated water public.
556*c*. Supervisors must fix rates.
556*d*. Petition for fixing rates.
556*e*. Hearing of petition. Value of water works.
556*f*. Rules to be observed in fixing rates.
556*g*. Changing rates.
556*h*. Record of rates to be published.
556*i*. Water to be furnished at rates fixed.
556*j*. Penalty for excessive charges.
556*k*. To sell to all persons.
556*l*. Condemning land for right of way.
556*m*. Right to water to irrigate lands sold by water or irrigating company, and easement.
556*n*. Control of use of water prohibited. Penalty for failure of board of supervisors to fulfill law.

Use of appropriated water public.

SEC. 556*b*. The use of all water now appropriated, or that may hereafter be appropriated, for irrigation, sale, rental, or distribution, is a public use, and the right to collect rates or compensation for use of such water is a franchise, and except when so furnished to any city, city and county, or town, or the inhabitants thereof, shall be regulated and controlled in the counties of this state by the several boards of supervisors thereof, in the manner prescribed in this chapter.

Supervisors must fix rates.

SEC. 556*c*. The several boards of supervisors of this state, on petition and notice as provided by law, are hereby authorized and required to fix and regulate the maximum rates at which any person, company, association, or corporation,

having or to have appropriated water for sale, rental, or distribution in each of such counties, may and shall sell, rent, or distribute the same.

Petition for fixing rates.

SEC. 556*d*. Whenever a petition of not less than twenty-five inhabitants, who are taxpayers of any county of this state, shall, in writing, petition the board of supervisors thereof, to be filed with the clerk of said board, to regulate and control the rates and compensation to be collected by any person, company, association, or corporation, for the sale, rental, or distribution of any appropriated water, to any of the inhabitants of such county, and shall in such petition specify the persons, companies, associations, or corporations, or any one or more of them, whose water rates are therein petitioned to be regulated or controlled, the clerk of such board shall immediately cause such petition, together with a notice of the time and place of hearing thereof, to be published in one or more newspapers published in such county; and if no newspaper be published therein, then shall cause copies of such petition and notice to be posted in not less than three public places in such counties, and such publication and notice shall be for not less than four weeks next before the hearing of said petition by said board; such notice to be attached to said petition shall specify a day of the next regular term of the session of the said board, not less than thirty days after the first publication or posting thereof, for the hearing of said petition, which shall impart notice to all such persons, companies, associations, and corporations mentioned in such petition, and all persons interested in the matters of such petition and notice. Such board may also cause citations to issue to any person or persons within such county to attend and give evidence at the hearing of such petition, and may compel attendance by attachment.

Hearing of petition. Value of waterworks.

SEC. 556*e*. At the hearing of said petition the board of supervisors shall estimate, as near as may be, the value of the canals, ditches, flumes, water chutes, and all other property actually used and useful to the appropriation and furnishing of such water, belonging to and possessed by each person, association, company, or corporation, whose franchise shall be so regulated and controlled; and shall in like manner estimate as to each of such persons, companies, associations, and corporations, their annual reasonable expenses, including the cost of repairs, management, and operating such works; and, for

the purpose of such ascertainment, may require the attendance of persons to give evidence, and the production of papers, books, and accounts, and may compel the attendance of such persons and the production of papers, books, and accounts, by attachment, if within their respective counties.

Rules to be observed in fixing rates.

SEC. 556*f*. In the regulation and control of such water rates for each of such persons, companies, associations, and corporations, such board of supervisors may establish different rates at which water may and shall be sold, rented, or distributed, as the case may be; and may also establish different rates and compensation for such water so to be furnished for the several different uses, such as mining, irrigating, mechanical, manufacturing, domestic, and for generating power, for all purposes for which such water shall be supplied to such inhabitants, but such rates as to each class shall be equal and uniform. Said boards of supervisors, in fixing such rates, shall, as near as may be, so adjust them that the net annual receipts and profits thereof to the said persons, companies, associations, and corporations so furnishing such water to such inhabitants shall be not less than six nor more than eighteen per cent upon the said value of the canals, ditches, flumes, chutes, and all other property actually used and useful to the appropriation and furnishing of such water of each of such persons, companies, associations, and corporations; but in estimating such net receipts and profits, the cost of any extensions, enlargements, or other permanent improvements of such water rights or waterworks shall not be included as part of the said expenses of management, repairs, and operating of such works, but when accomplished may and shall be included in the present cost and cash value of such works. In fixing said rates, within the limits aforesaid, at which water shall be so furnished as to each of such persons, companies, associations, and corporations, each of said boards of supervisors may likewise take into estimation any and all other facts, circumstances, and conditions pertinent thereto, to the end and purpose that said rates shall be equal, reasonable, and just, both to such persons, companies, associations, and corporations, and to said inhabitants. The said rates, when so fixed by such board, shall be binding and conclusive for not less than one year next after their establishment, and until established anew or abrogated by such board of supervisors, as hereinafter provided. And until such rates shall be so established, or after they shall have been abrogated

by such board of supervisors as in this chapter provided, the actual rates established and collected by each of the persons, companies, associations, and corporations now furnishing, or that shall hereafter furnish, appropriated waters for sale, rental, or distribution to the inhabitants of any of the counties of this state, shall be deemed and accepted as the legally established rates thereof.

Changing rates.

SEC. 556*g*. At any time after the establishment of such water rates by any board of supervisors of this state, the same may be established anew, or abrogated in whole or in part, by such board, to take effect not less than one year next after such first establishment, but subject to said limitation for one year, to take effect immediately, in the following manner: Upon the written petition of inhabitants, as hereinbefore provided, or upon the written petition of any of the persons, companies, associations, or corporations, the rates and compensation of whose appropriated waters have already been fixed and regulated, and are still subject to such regulation by any board of supervisors of this state, as in this act provided, and upon the like publication or posting of such petition and notice, and for the like period of time as hereinbefore provided, such board of supervisors shall proceed anew, in the manner hereinbefore provided, to fix and establish the water rates for such person, company, association, or corporation, or any number of them, in the same manner as if such rates had not been previously established, and may, upon the petition of such inhabitants, but not otherwise, abrogate any and all existing rates theretofore established by such board. All water rates, when fixed and established, as herein provided, shall be in force and effect until established anew or abrogated, as provided in this chapter.

Record of rates to be published.

SEC. 556*h*. Each board of supervisors of this state, when fixing and establishing, or fixing and establishing anew, or abolishing any previously established water rates, as hereinbefore provided, shall cause a record to be made thereof in the records of such board, and cause the same to be published or posted in the manner and for the time required for the publication or posting of said petitions and notices.

Water to be furnished at rates fixed.

SEC. 556*i*. Any and all persons, companies, associations, or corporations, furnishing for sale, rental, or distribution, any

appropriated waters to the inhabitants of any county or counties of this state (other than to the inhabitants of any city, city and county, or town, therein), shall so sell, rent, or distribute such waters at rates not exceeding the established rates fixed and regulated therefor by the board of supervisors of such counties, or as fixed and established by such person, company, association, or corporation, as provided in this chapter.

Penalty for excessive charges.

SEC. 556*j*. If any person, company, association, or corporation, whose water rates for any county of this state have been fixed and regulated by a board of supervisors as in this chapter provided, and while such rates are in force, shall collect, for any appropriated water furnished to any inhabitant of such county, water rates in excess of such established rates, shall be liable in an action by any such inhabitant so aggrieved to a recovery of the whole rate so collected, together with actual damages sustained by such inhabitant with costs of suit; and in addition thereto shall forfeit for the public use the franchise and waterworks of such company or corporation to the county in which such excessive rates were charged; and the board of supervisors, upon affidavit of any interested party, setting forth that any such person, company, or corporation has charged rates for water in excess of the rates established by the board of supervisors, shall cause the district attorney to commence an action in the superior court of the county, within thirty days from the receipt by them of such affidavit, to enforce the forfeiture of the franchise or waterworks of such person, company, or corporation.

COMMISSIONERS' NOTE: The provisions of this section relating to the forfeiture of franchises, and the commencement of a suit to enforce such franchise forfeiture, were taken, with some slight modifications, from an act approved March 28, 1880 (Stats. 1880, 16).

To sell to all persons.

SEC. 556*k*. Every person, company, association, and corporation, having in any county in this state (other than in any city, city and county, or town, therein) appropriated waters for sale, rental, or distribution, to the inhabitants of such county, upon demand therefor, and tender in money of such established water rates, shall be obliged to sell, rent, or distribute such water to such inhabitants, at the established rates, regulated and fixed therefor, as in this chapter provided, whether so fixed by the board of supervisors, or otherwise, to the extent of the actual supply of such appropriated waters

of such person, company, association, or corporation, for such purposes. If any person, company, association, or corporation, having water for such use, shall refuse compliance with such demand, or shall neglect, for the period of five days after such demand, to comply therewith, to the extent of his or its reasonable ability so to do, shall be liable in damages to the extent of the actual injury sustained by the person or party making such demand and tender to be recovered, with costs.

Condemning land for right of way.

SEC. 556*l*. Whenever any person, company, association, or corporation shall have acquired the right to appropriate water, or shall have acquired the right to appropriate such water, in this state, such person, company, association, or corporation may proceed to condemn the lands and premises necessary to such right of way, under the provisions of Title VII, of Part III, of the Code of Civil Procedure, of this state, and amendments made and to be made thereto, and all the provisions of said code, so far as the same can be made applicable, relating to the condemnation and taking of property for public uses, shall be applicable to the provisions of this chapter.

Right to water to irrigate lands sold by water or irrigating company, and easement.

SEC. 556*m*. Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person, who is cultivating land, on the line and within the flow of any ditch, owned by such corporation, has been furnished water by it, with which to irrigate his land, such persons shall be entitled to the continued use of said water, upon the same terms as those who have purchased their lands of the corporation.

Control of use of water prohibited. Penalty for failure of board of supervisors to fulfill law.

SEC. 556*n*. No person, company, or corporation selling water for irrigation shall be permitted to exercise any control as to the use of the water after its delivery to the purchaser. Any board of supervisors of any county which shall fail or refuse to perform any of the duties prescribed by this chapter, at the time and in the manner hereinbefore specified, shall be deemed guilty of malfeasance in office, and upon conviction thereof, at

the suit of any interested party, in any court of competent jurisdiction, shall be removed from office.

COMMISSIONERS' NOTE: This chapter, from section 556*b* to 556*l*, both inclusive, is an act of the legislature approved March 12, 1885 (Stats. 1885, 95), here made part of the code. Section 556*n* is old section 552 (see note at the foot of Chapter I, this title). Section 556*n* is section 5 of an act of the legislature approved March 26, 1880 (Stats. 1880, 16). The remainder of said act of 1880 has been virtually repealed by the act approved March 12, 1885 (Stats. 1885, 95). Section 556*o* embodies practically the provisions of section 556*a*, *ante*, the former section, however, applying only to boards of supervisors and to counties.

TITLE IX.

HOMESTEAD CORPORATIONS.

Section 557. Time of corporate existence.
558. By-laws, must specify what.
559. Advertisement and sale of delinquent and forfeited shares.
560. May borrow and loan funds how, and for what time.
561. Minor children, wards, and married women may own stock.
562. Forfeiture for speculating in or owning lands exceeding two hundred thousand dollars.
563. When corporation is terminated, and how.
564. Payment of premiums.
565. Annual report to be published.
566. Publication in certain cases.

Time of corporate existence.

SEC. 557. Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years.

By-laws must specify, what.

SEC. 558. Such corporations must specify in their by-laws the times when the installments of the capital stock are payable, the amount thereof, and the fines, penalties, or forfeitures incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand.

Advertisement and sale of delinquent and forfeited shares.

SEC. 559. Whenever any shares of stock are declared forfeited, by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the

subscriber and the number of shares, by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, city and county, or town, where the principal place of business of such corporation is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares must be disposed of to the highest bidder for cash. No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made the secretary must, on receipt of the purchase money, transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all installments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber.

COMMISSIONERS' NOTE: The expression "city, town, or county" has been changed to read "city, city and county, or town."

May borrow and loan funds, how, and for what time.

SEC. 560. Homestead corporations may borrow money for the purposes of the corporation, not exceeding at any one time one fourth of the aggregate amount of the shares or parts of shares actually paid in, and the income thereof; no greater rate of interest must be paid therefor than twelve per cent per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow, on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan, any sum of money which, together with the interest contracted to become due thereon, will not exceed ninety per cent of the unpaid amount subscribed by the shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence.

Minor children, wards, and married women may own stock.

SEC. 561. Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

Forfeiture for speculating in or owning lands exceeding two hundred thousand dollars.

SEC. 562. Homestead corporations must not purchase and sell, or otherwise acquire and dispose of real property, or any interest therein, or any personal property, for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in trust or otherwise, for its purposes, real property, or any interest therein, which in the aggregate exceeds in cash value the sum of two hundred thousand dollars. For any violation of the provisions of this section corporations forfeit their corporate rights and powers. On the application of any citizen to a court of competent jurisdiction such forfeiture may be adjudged, and the judgment carries with it costs of the proceedings.

When corporation is terminated, and how.

SEC. 563. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of the time fixed for its existence in the articles of incorporation, or when dissolved as provided in this part. No dividend of funds must be made on termination of its corporate existence, until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine, must divide its property among its shareholders in proportion to their respective interests, or, upon the application of a majority in interest of the stockholders, must sell and dispose of any or all of the real estate of the corporation upon such terms as may be most conducive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders, or may at any time, when best for the interests of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums, at auction or otherwise, among the shareholders.

Payment of premiums.

SEC. 564. Such premiums on lots may be made payable at the time they are bid off, and, if not so paid on any lot of land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in

the manner provided in the by-laws for the sale of shares on account of delinquent installments and premiums.

Annual report to be published.

SEC. 565. The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in a newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks, if published in a daily. The statement must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and liabilities.

Publication in certain cases.

SEC. 566. In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published in an adjoining county.

TITLE IX*a*.

BANKING CORPORATIONS.

Section 567. How created, and what may circulate as money.
567*a*. Certain corporations may elect to have capital stock. Proceedings thereon. No dividends payable by any bank on guaranty notes. Liability of officers.
567*b*. Must keep list of stockholders, etc.
567*c*. Who may collect deposits in certain cases.
567*d*. Upon what showing deposit may be collected.
567*e*. Penalty.
567*f*. Banks must publish statements of all unclaimed deposits, when.
567*g*. Failure to make sworn statement, misdemeanor.

How created, and what may circulate as money.

SEC. 567. Corporations or associations established for banking purposes may be organized in the manner provided by law. No corporation so organized shall issue or put in circulation as money anything but the lawful money of the United States.

COMMISSIONERS' NOTE: This section is new and is based on section 5, Article XII, of the constitution of 1879.

Certain corporations may elect to have capital stock. Proceedings thereon. No dividends payable by any bank on guaranty notes. Liability of officers.

SEC. 567*a*. Every corporation that has been or may be created under the laws of this state, doing a banking business therein, and which has no capital stock, may elect to have a

capital stock, and may issue certificates of stock therefor in the same manner as corporations formed under the provisions of Chapter I, Article I, of this code, relating to the formation of corporations; *provided*, that no such corporation shall use or convert any moneys or funds theretofore belonging to it or under its control into capital stock, but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting and its object must be given by the president of such corporation by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of such meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the office of the secretary of state, and of the clerk of the county, or city and county, where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock. No bank in this state shall ever pay any dividend upon so-called guaranty notes nor upon any stock except upon the amount actually paid in money into said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors consenting to the same jointly and severally liable to the depositors, to the extent thereof.

COMMISSIONERS' NOTE: The word "general" on second line, and the words "and provided further that," near the end of the present section, are omitted. The words "the Civil" before "Code" substituted by the word "this," and the word "this" in the fourth sentence by the word "such." The expression "or city and county" inserted in the same sentence. This section is the present section 300 of the Civil Code transferred to this title and renumbered 567*a*.

Must keep list of stockholders, etc.

SEC. 567*b*. Every corporation doing a banking business in this state must keep in its office, in a place accessible to the

stockholders, depositors, and creditors thereof, and for their use, a book, containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary showing:

1. The names of the directors of such corporation;

2. The number and value of shares of stock held by each director.

The entries on such book, and such notice, shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each.

COMMISSIONERS' NOTE: This section is the present section 321, transferred to this title and renumbered 567*b*. The last sentence, viz., "The provisions of this section shall apply to all banking corporations, formed or existing before 12 o'clock, noon, of the day on which this code took effect, as well as to those formed after such time," is omitted in the section as reported, for the reason that section 288, *ante*, covers the subject.

Who may collect deposits in certain cases.

SEC. 567*c*. The surviving husband or wife of any deceased person, or if no husband or wife be living, then the next of kin of such decedent, may, without procuring letters of administration, collect of any bank any sum which said deceased may have left on deposit in such bank at the time of his or her death; *provided*, said deposit shall not exceed the sum of five hundred dollars.

COMMISSIONERS' NOTE: This and sections 567*d* and 567*e* have been taken from the act amendatory of the act approved February 18, 1874, which became a law, under constitutional provision, without Governor's approval, March 8, 1895 (Stats. 1895, 32).

Upon what showing deposit may be collected.

SEC. 567*d*. Any bank, upon receiving an affidavit stating that said depositor is dead, and that affiant is the surviving husband or wife, as the case may be, or stating that the said decedent left no husband or wife, and that affiant is next of kin of said decedent, and entitled to distribution, and that the whole amount that decedent left on deposit in any and all banks of deposit in this state does not exceed the sum of five hundred dollars, may pay to said affiant any deposit of said decedent, if the same does not exceed the sum of five hundred dollars, and the receipt of such affiant shall be a sufficient acquittance therefor.

COMMISSIONERS' NOTE: See note to preceding section.

Penalty.

SEC. 567*e*. Any person who shall make a false affidavit in regard to the matters specified in this chapter, shall be deemed to be guilty of perjury.

COMMISSIONERS' NOTE: See note to section 567, *ante*.

Banks must publish statements of all unclaimed deposits, when.

SEC. 567*f*. The president, cashier, or secretary of every bank, depository, society, or institution of every kind or character which receive money on deposit, or in which deposits of money are made, and upon which deposits no interest is paid, shall, within fifteen days after the first day of June of each year, return to the board of bank commissioners a sworn statement showing the amount standing to his credit, the last known place of residence or post office address, and the fact of death, if known to said president, cashier, or secretary, of every depositor of such bank, depository, society, or institution, who shall not have made a deposit therein, or withdrawn therefrom any part of his deposit or funds to his credit therein, for a period of more than ten years next preceding; and the presidents, cashiers, or secretaries of all such banks, depositories, societies, and institutions which receive money on deposit, or in which deposits of money are made, shall give notice of these deposits in one or more newspapers published in or nearest to the city, city and county, or town where such banks, depositories, societies, or institutions are situated, at least once a week for four successive weeks, the cost of such publications to be paid pro rata out of such unclaimed deposits; *provided*, *however*, that this chapter shall not apply to or affect the deposit made by or in the name of any person known to the said presidents, cashiers, or secretaries to be living, or any deposit which, with the accumulations thereon, shall be less than fifty dollars.

COMMISSIONERS' NOTE: This and the following section are taken from the act approved February 25, 1897 (see Stats. 1897, 27).

Failure to make sworn statement misdemeanor.

SEC. 567*g*. Any president, cashier, or secretary of either of the banks, depositories, societies, or institutions named in section 567*f*, neglecting or refusing to make the sworn statement required by said section, shall be guilty of a misdemeanor.

COMMISSIONERS' NOTE: See note to preceding section.

TITLE X.

SAVINGS, BUILDING AND LOAN CORPORATIONS.

Section 571. May loan money, on what terms, how, to whom, and for how long.
572. Capital stock, and rights and privileges thereof.
573. No dividends, except from surplus profits. To contract no liability, except for deposits.
574. Property which may be owned by corporations, and how disposed of. Restrictions in purchase as provided above.
575. Married women and minors may own stock in their own right.
576. May issue transferable certificates of deposit. Special certificates.
577. To provide reserve fund for the payment of losses.
578. Prohibition on director and officer, and what vacates office.
579. Definition of phrase "create debts."
580. Cashier or secretary must publish a sworn statement of all unclaimed deposits.
581. Bank commissioners to incorporate returns in subsequent report. Refusal of cashier or secretary to make sworn statement a misdemeanor.
582. Right to dissolve.
583. After five years must pay into "the dissolved savings bank fund."
583*a*. How said fund drawn upon, and when escheats to state.
583*b*. Attorney-general empowered to bring actions.
583*c*. Investment of funds.
583*d*. Bonds purchased to be delivered to state treasurer.
583*e*. To sell bonds to meet payments.

May loan money, on what terms, how, to whom, and for how long.

SEC. 571. Corporations organized for the purpose of accumulating and loaning the funds of their members, stockholders, and depositors may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and may repay depositors with or without interest. No such corporation must loan money, except on adequate security on real or personal property, and such loan must not be for a longer period than six years.

Capital stock, and rights and privileges thereof.

SEC. 572. When savings and loan corporations have a capital stock specified in their articles of incorporation, certificates of the ownership of shares may be issued; and the rights and privileges to be accorded to, and the obligations to be imposed upon, such capital stock, as distinct from those of depositors, must be fixed and defined either in the articles of incorporation or in the by-laws.

COMMISSIONERS' NOTE: On February 22, 1872, an act was approved (Stats. 1871–72, 132) amending the act of April 11, 1862, relating to savings banks.

The last named act was incorporated in the code, without the provision contained in the amendment of February 21, 1872. It was evidently the opinion of the legislature that the general provisions relating to increasing and diminishing capital stock were sufficient for this class of corporations. Hence, no other provisions are included herein. The express repeal of said statute of 1871-72 is therefore recommended.

No dividends, except from surplus profits. To contract no liability except for deposits.

SEC. 573. The directors of savings and loan corporations may, at such times and in such manner as the by-laws prescribe, declare and pay dividends of so much of the profits of the corporation, and of the interest arising from the capital stock, and deposits, as may be appropriated for that purpose, under the by-laws, or under their agreement with depositors. The directors must not contract any debt or liability against the corporation for any purpose whatever, except for deposits. The capital stock and the assets of the corporation are a security to depositors and stockholders, depositors having the priority of security over the stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders.

COMMISSIONERS' NOTE: Act prohibiting dividing or withdrawing of capital stock (Stats. 1871-72, 132) omitted for the same reasons given in note to preceding section. (See Sec. 309, *ante*.)

Property which may be owned by corporations, and how disposed of. Restrictions in purchases as provided above.

SEC. 574. Savings and loan corporations may purchase, hold, and convey real and personal property, as follows:

1. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed one hundred thousand dollars; except, on a vote of two thirds of the stockholders, the corporation may increase the sum to an amount not exceeding two hundred and fifty thousand dollars;

2. Such as may have been mortgaged, pledged, or conveyed to it in trust, for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation;

3. Such as may have been purchased at sales under pledges, mortgages, or deeds of trust, made for its benefit, for money so loaned, and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon;

4. No such corporation must purchase, hold, or convey real estate in any other case or for any other purpose; and all real estate described in subdivision three of this section must be sold by the corporation within five years after the title thereto is vested in it by purchase or otherwise;

5. No such corporation must purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation, for the convenient transaction of its business, mortgages on real estate, bonds, securities, or evidences of indebtedness, public or private, gold and silver bullion, and United States mint certificates of ascertained value, and evidences of debt issued by the United States;

6. No such corporation must purchase, hold, or convey bonds, securities, or evidences of debt, public or private, except bonds of the United States, of the state of California, and of the counties, cities, or cities and counties, or towns, or school or high school districts of the state of California, unless such corporation has a capital stock or reserve fund paid in, of not less than three hundred thousand dollars.

COMMISSIONERS' NOTE: "School or high school districts" here added for the same reason assigned in note to section 444, *ante*, and the word "such" inserted before the word "corporation" in subdivisions 5 and 6.

Married women and minors may own stock in their own right.

SEC. 575. Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

May issue transferable certificates of deposit. Special certificates.

SEC. 576. Savings and loan corporations may issue general certificates of deposit which are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates acknowledging the deposit, by the person therein named, of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited, and therein named, may be transferred only on the books of the corporation; payment thereafter, made by the corporation, to the depositor named in such certificate, or to his assignee named upon the books of the corporation, or, in case of death, to the legal representative of such person, of the sum for which such special certificate was issued, discharges the corporation from all further liability on account of the money so paid.

To provide reserve fund for the payment of losses.

SEC. 577. Savings and loan corporations may prescribe by their by-laws the time and conditions on which repayment is to be made to depositors; but whenever there is any call by depositors for repayment of a greater amount than the corporation may have disposable for that purpose, the directors or officers thereof must not make any new loans or investments

of the funds of the depositors, or of the earnings thereof, until such excess of call has ceased. The directors of any such corporation having no capital stock must retain, on each dividend day, at least five per cent of the net profits of the corporation, to constitute a reserve fund, which must be invested in the same manner as other funds of the corporation, and must be used toward paying any losses which the corporation may sustain in pursuing its lawful business. The corporation may provide, by its by-laws, for the disposal of any excess in the reserve fund, over one hundred thousand dollars, and the final disposal upon the dissolution of the corporation, of the reserve fund, or of the remainder thereof, after payment of losses.

Prohibition on director and officer, and what vacates office.

SEC. 578. No director or officer of any savings and loan corporation must, directly or indirectly, for himself or as a partner, or agent for others, borrow any of the deposits or other fund of such corporation, nor must he become an indorser or surety for loans to others, nor in any manner be an obligor for moneys borrowed of or loaned by such corporation. The office of any director or officer who acts in contravention of the provisions of this section immediately thereupon becomes vacant.

Definition of phrase "create debts."

SEC. 579. Receiving deposits, issuing certificates of deposits, checks, and bills of exchange, and the like, in the transaction of the business of savings and loan corporations, must not be construed to be the creation of debts, within the meaning of the phrase "create debts," in section 309.

Cashier or secretary must publish sworn statement of all unclaimed deposits.

SEC. 580. The cashier or secretary of every savings bank, savings and loan society, and every institution in which deposits of money are made and interest paid thereon, shall, within fifteen days after the first day of June of each year, return to the board of bank commissioners a sworn statement, showing the amount standing to his credit, the last known place of residence or post office address, and the fact of death, if known to said cashier or secretary, of every depositor who shall not have made a deposit therein, or withdrawn therefrom any part of his deposit, or any part of the interest thereon, for a period of more than ten years next preceding; and the cashiers or secretaries of such savings banks, savings and loan societies, and institutions for deposit of savings, shall give

notice of these deposits in one or more newspapers published in or nearest to the city, city and county, or town where such banks are situated, at least once a week for four successive weeks, the cost of such publications to be paid pro rata out of said unclaimed deposits; *provided, however*, that this section shall not apply to or affect the deposit made by or in the name of any person known to the said cashier or secretary to be living, or any deposit which, with the accumulations thereon, shall be less than fifty dollars.

Bank commissioners to incorporate returns in subsequent report. Refusal of cashier or secretary to make sworn statement, a misdemeanor.

SEC. 581. The board of bank commissioners shall incorporate in their subsequent report each return which shall have been made to them, as provided in section 580; and any cashier or secretary of either of the banking institutions mentioned in said section, neglecting or refusing to make the sworn statement required by said section, shall be guilty of a misdemeanor.

Right to dissolve.

SEC. 582. Any savings bank or trust company or bank of deposit, heretofore created or which may hereafte be created, shall have the right, on application of the stockholders or members to the superior court of the county wherein its principal place of business is situated, to dissolve said corporation in the manner provided for in Title VI, Part III, of the Code of Civil Procedure.

After five years must pay into "the dissolved savings bank fund."

SEC. 583. It is hereby made the duty of every person or corporation holding funds of any savings bank or trust company, or bank of deposit, at the end of five years from and after such bank has ceased to receive deposits or do business, to pay the same into the state treasury, which money shall be held in the state treasury in a fund which is hereby designated as "the dissolved savings bank fund"; and at the same time it shall be the duty of such person or corporation to furnish to the state controller a list of the names of all depositors to whom said moneys belong, or to whom said bank owes the same.

How said fund drawn upon, and when escheats to state.

SEC. 583*a*. The money in said "the dissolved savings bank fund" may be drawn out on the warrant of the state controller, issued on proofs of ownership, approved and allowed by

the state board of examiners; and all moneys paid into the said fund, uncalled for within five years after being paid in, shall escheat to the state, and thereafter only be drawn out in such manner as now provided for by law for the estates of deceased persons escheated to this state.

Attorney-general empowered to bring actions.

SEC. 583*b*. Any person or corporation failing to comply with the provisions of sections 580 or 581 shall be liable to the state of California for the amount of money so retained by them contrary to such provisions, and the attorney-general of this state is hereby authorized, empowered, and directed to bring action in the name of the people of the state of California, in such manner and upon the same terms as now provided for escheated estates, to recover judgment for said money, and when so recovered to be paid into the state treasury and held subject to the provisions of section 583*a*; *provided*, that said fund shall be liable for the expense of the recovery of the same, to be paid out upon the demands audited by the state board of examiners.

Investment of fund.

SEC. 583*c*. Whenever and as often as there is in the state treasury to the credit of the said "the dissolved savings bank fund" the sum of ten thousand dollars, the state board of examiners must invest the same in civil funded bonds of this state, or in bonds of the United States, or in bonds of the several counties or school or high school districts in this state; the investments to be made in such manner and upon such terms as the board shall deem for the best interests of the said "the dissolved savings bank fund"; *provided*, that no bonds of any counties or school districts shall be purchased of which the debt, debts, or liabilities at the time exceed fifteen per cent of the assessed value of the taxable property of said county or district.

COMMISSIONERS' NOTE: "School or high school districts" added. See note to section 444, *ante*.

Bonds purchased to be delivered to state treasurer.

SEC. 583*d*. All bonds so purchased by the board must be delivered to the state treasurer, who shall keep them as a portion of the said "the dissolved savings bank fund," the interest upon such bonds to be placed by him to the credit of said fund.

To sell bonds to meet payments.

SEC. 583*e*. Whenever the moneys on hand in the state treasury to the credit of the said "the dissolved savings bank fund"

is not sufficient to pay the claims allowed by the state board of examiners against such fund, it shall be the duty of said board to sell such bonds belonging to said fund, as they may deem proper, for the purpose of providing funds for the payment of such claims so allowed by them.

COMMISSIONERS' NOTE: The preceding nine sections were embodied in two acts, one approved March 31, 1891 (Stats. 1891, 270), and one approved March 23, 1893 (Stats. 1893, 183). Prior to the adoption of the codes, a number of special statutes were passed, affecting savings and loan corporations in some particulars, but as the code now provides that "private corporations may be formed for any purposes for which individuals may lawfully associate themselves" (section 286), and, as it is desirable that all laws pertaining to corporations should be of a general nature, so far as possible, none of the special statutes have been retained herein.

TITLE XI.

MINING CORPORATIONS.

CHAPTER I. [584–587*b*.]
II. PROTECTION OF MINERS. [587*c*–587*d*.]
III. PROTECTION OF STOCKHOLDERS. [587*e*–587*h*.]

CHAPTER I.

ARTICLE I. STOCK, HOW HELD AND VOTED.
II. TRANSFER AGENCIES.
III. SALE, PURCHASE, OR OTHER DISPOSITION OF MINES.
IV. CONSOLIDATION OF MINING CORPORATIONS.

ARTICLE I.

STOCK, HOW HELD AND VOTED.

Section 584. Stock to be in name of real owner or trustee.
585. Books, when to close. Stock, how voted.

Stock to be in name of real owner or trustee.

SEC. 584. All stock in any mining corporation organized or doing business in this state shall stand in the books of said corporation, in all cases, in the names of the real owners of such stock, or in the name of the trustees of such real owners; but in every case where such stock shall stand in the name of a trustee, the party for whom he holds such stock in trust shall be designated upon said books, and also in the body of the certificate of such stock.

COMMISSIONERS' NOTE: This section is taken from section 2 of an act approved April 23, 1880 (Stats. 1880, 131). The former section 584 was repealed by act of April, 1876 (Am. 1875–76, 73).

Books, when to close. Stock, how voted.

SEC. 585. It shall not be lawful for any such corporation, or the secretary thereof, to close the books of said corporation more than two days prior to the day of any election. At such election the stock of said corporation shall be voted by the bona fide owners thereof, as shown by the books of said corporation, unlesss the certificate of stock, duly indorsed, be produced at such election, in which case said certificates shall be deemed the highest evidence of ownership, and the holder thereof shall be entitled to vote the same.

COMMISSIONERS' NOTE: The present section 585, for reasons set forth in note to section 321, *ante*, has been made part of the last named section. Section 585, as reported, is now section 3 of an act approved April 23, 1880 (Stats. 1880, 131).

ARTICLE II.

TRANSFER AGENCIES.

Section 586. Transfer and issuance of stock without this state.
587. Stock, how and when issued.

Transfer and issuance of stock without this state.

SEC. 586. Any corporation organized in this state for the purpose of mining, or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and directors of the corporation.

Stock, how and when issued.

SEC. 587. All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancellation.

ARTICLE III.

SALE, PURCHASE, OR OTHER DISPOSITION OF MINES.

Directors not to sell, etc., unless two thirds of capital stock consent.

SEC. 587*a*. It shall not be lawful for the directors of any mining corporation to sell, lease, mortgage, or otherwise dispose of the whole or any part of the mining ground owned or

held by such corporation, nor to purchase or obtain in any way (except by location) any additional mining ground, unless such act be ratified by the holders of at least two thirds of the stock of such corporation then outstanding. Such ratification may be made either in writing, signed and acknowledged by such stockholders, or by resolution, duly passed at any regularly called stockholders' meeting. The certificate of the secretary of any mining corporation, reciting such ratification at a stockholders' meeting, or the names of stockholders, with the amount of stock held by each, and the total stock outstanding, signed and acknowledged by him in the manner provided for acknowledgments to conveyances of real property may be attached to or indorsed upon any deed, mortgage, conveyance, or other instrument, made under this section, and recorded with such deed, conveyance, or other instrument, and the recitals contained in such certificate, or the duly recorded copy thereof, are made prima facie evidence of their truthfulness for all purposes whatsoever; *provided*, that no one, except a stockholder in any such corporation, shall be permitted to urge any objection to the acquisition of any additional ground or other property by such corporation.

COMMISSIONERS' NOTE: This is section 1 of the act approved April 23, 1880 (Stats. 1880, 131), as amended by act approved March 9, 1897 (Stats. 1897, 96).

ARTICLE IV.

CONSOLIDATION OF MINING CORPORATIONS.

How effected.

SEC. 587*b*. It shall be lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such companies so desiring to consolidate their interests; but no such consolidation shall take place without the written consent of the stockholders representing two thirds of the capital stock of each company, and no such consolidation shall, in any way, relieve such companies, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same shall be given, by advertising, for one month, in at least one newspaper in the county where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal

place of business of any of said companies shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original certificate of incorporation of any of said companies shall be filed, and a copy thereof shall be filed in the office of the secretary of state; such certificate shall be signed by a majority of each board of trustees or directors of the original companies, and it shall be their duty to call, within thirty days after the filing of such certificate, and after at least ten days' notice, a meeting of the stockholders of all of said companies so consolidated, to elect a board of trustees or directors for the consolidated company, for the year thence next ensuing. The said certificate shall also contain all the requirements prescribed by section 290.

COMMISSIONERS' NOTE: This is present section 361 of the Civil Code made part of this article and designated 587*b*. The last sentence of present section, viz.: "This section shall apply to all corporations formed under the laws of this state, existing prior to January first, eighteen hundred and seventy-three, or under the provisions of this code, since that date," is omitted, for the reason that section 288, *ante*, covers the subject.

CHAPTER II.

PROTECTION OF MINERS.

ARTICLE I. SECOND MODE OF EGRESS.

ARTICLE I.

SECOND MODE OF EGRESS.

Section 587*c*. Two modes of egress, when required.
587*d*. Liabilities for failure to comply with preceding section.

Two modes of egress, when required.

SEC. 587*c*. It shall not be lawful for any corporation, association, or owner of any quartz mining claim, situate in this state, in which twelve or more men are employed daily, to sink in such mine, or mines, any perpendicular or incline shaft beyond a depth from the surface of three hundred feet, unless a second mode of egress is provided from such mine, by shaft, tunnel, or otherwise, running to the surface, or connecting with the main shaft at a depth of not less than one hundred feet from the surface.

COMMISSIONERS' NOTE: This and the following section are substantially taken from act approved March 16, 1872 (Stats. 1871-72, 413).

Liabilities for failure to comply with preceding section.

SEC. 587*d*. When any corporation, association, or owner of any quartz mine situated in this state, shall fail to provide a mode of escape in case of accident, as contemplated by this article, and any accident shall occur therein in which any person shall be injured, or death ensues, by reason of the lack of such mode of escape, the corporation, association, owner, or owners of such mine shall be liable to the person injured, or his heirs, for all damages that may result by reason thereof. An action may be maintained for such damages against the corporation, association, or owner of such mine, and the owners thereof shall be jointly and severally liable for such damages.

COMMISSIONERS' NOTE: See note to preceding section.

CHAPTER III.

PROTECTION OF STOCKHOLDERS.

ARTICLE I. BOOKS AND REPORTS.
II. EXAMINATION OF MINES.

ARTICLE I.

BOOKS AND REPORTS.

Section 587*e*. Books of mining corporations.
587*f*. Duties of superintendent, etc.

Books of mining corporations.

SEC. 587*e*. It shall be the duty of the secretary of every corporation formed for the purpose of mining, or operating mines, to keep a complete set of books, showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers shall, at all times during business hours, be open to the inspection of any bona fide stockholder; and if any stockholder shall at any time so request, it shall be the duty of the secretary to attend at the office of said company at least one hour in the day out of regular business hours, and exhibit such books and papers of the company as such stockholder may desire, and such stockholder shall be entitled to be accompanied by an expert and to make copies or extracts from any such books or papers. It shall be the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing

from what source such receipts were derived, and for what and to whom such disbursements or payments were made, and for what object or purpose the same were made; also, all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance sheet shall be verified by the president and secretary, and posted in some conspicuous place in the office of the company.

COMMISSIONERS' NOTE: See note to section 587*f*, *post*.

Duties of superintendent, etc.

SEC. 587*f*. It shall be the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account shall also contain a verified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each one. He shall attach to each account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It shall also be his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports, and correspondence, from the superintendent, shall be kept in some conspicuous place in the office of said company, and be open to the inspection of all stockholders; *provided*, that this section shall apply only to mining corporations whose stock is listed and offered for sale at public exchange.

COMMISSIONERS' NOTE: The two preceding and the two following sections are taken from the act approved March 30, 1874 (Stats. 1873–74, 866), and amended by act approved April 23, 1880 (Am. 1880, 135), and by act approved February 26, 1897 (Stats. 1897, 38).

ARTICLE II.

EXAMINATION OF MINES.

Examination of grounds.

SEC. 587*g*. Any bona fide stockholder of a corporation formed under the laws of this state for the purpose of mining,

shall be entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit to make such visit and examination; and when such stockholder shall make application to the president of such corporation, he shall immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines as the party named in said order may desire to visit and examine. It shall be the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete inspection of said mine or mines, and of the workings therein; it shall be his duty also to accompany said stockholder, either in person or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof. In case of the failure or refusal of the superintendent to obey such order, such stockholder shall be entitled to recover in any court of competent jurisdiction, against said corporation, the sum of one thousand dollars and traveling expenses to and from said mine as liquidated damages, together with costs of suit. In case of such refusal, it shall be the duty of the directors of such corporation forthwith to remove the officer so refusing, and thereafter he shall not be employed, directly or indirectly, by such corporation, and no salary shall be paid to him.

COMMISSIONERS' NOTE: See note to preceding section.

Penalty.

SEC. 587*h*. In case of the refusal or neglect of the president to cause to be issued by the secretary the order mentioned in section 587*g*, such stockholder shall be entitled to recover against said president the sum of one thousand dollars and costs, as liquidated damages. In case of the failure of the directors to have the reports and accounts current made and posted as required by this chapter, they shall be liable, either severally or jointly, to an action by any stockholder complaining thereof, and on proof of such refusal or failure, such complaining stockholder shall recover judgment for actual damages sustained by him, with costs of suit. And each of such defaulting directors shall also be liable to removal for such neglect.

COMMISSIONERS' NOTE: See note to section 587*f*, *ante*.

TITLE XI*a*.

CORPORATIONS FOR THE PROMOTION OF THE ARTS AND SCIENCES AND EXTENSION OF COMMERCE AND TRADE.

Section 588. May be formed, how.
588*a*. Certificate of incorporation.
588*b*. Corporation, rights and powers of.
588*c*. Stock and certificates.
588*d*. Trustees, etc.
588*e*. Real and personal estate.
588*f*. By-laws.
588*g*. Meetings.
588*h*. Power to levy assessments.
588*i*. Existing corporations may take benefit of this title, how.

May be formed, how.

SEC. 588. Corporations for the formation and organization of chambers of commerce, boards of trade, mechanic institutes, and other associations for the extension and promotion of trade and commerce, or the advancement, protection, and improvement of the mechanic arts and sciences, may be formed and organized according to the provisions of this title, and such corporations and the members thereof shall be subject to the liabilities herein imposed, and to none other.

COMMISSIONERS' NOTE: This and the following sections to and including section 588*i*, are taken from act approved March 31, 1866 (Stats. 1865–66, 469), as amended by act approved March 10, 1885 (Stats. and Amendments 1885, 76).

Certificate of incorporation.

SEC. 588*a*. Any twenty or more persons who may desire to form a corporation for either of the purposes specified in section 588, shall make, sign, and acknowledge, before some officer competent to take acknowledgment of deeds, and file in the office of the county clerk of the county in which the principal place of business of the organization is intended to be located, and a certified copy thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of the corporation, the object for which the corporation shall be formed, the time of its existence, not to exceed fifty years, and the name of the city or town, and county, in which the principal place of business of the corporation is to be located.

Corporation, rights and powers of.

SEC. 588*b*. When the certificate provided for in section 588*a* of this title shall have been filed as therein provided, the per-

sons who shall have signed and acknowledged the same, and such persons as shall thereafter become their associates or successors, shall be a body politic and corporate, and by their corporate name have succession for the period limited and power:

1. To sue and be sued in any court;

2. To make and use a common seal, and to alter the same at pleasure;

3. To lease, purchase, hold, sell, mortgage, convey in trust, convey, release from trust, or mortgage, such real and personal estate as hereinafter provided in this title;

4. To elect or appoint such officers, agents, and servants as the business of the corporation shall require;

5. To make by-laws, not inconsistent with the laws of this State, providing for the organization of the corporation and the management of its affairs.

Stock and certificates.

SEC. 588*c*. Corporations formed under this title may have a capital stock, and may issue certificates to represent shares of such capital stock; *provided*, that the certificate directed in section 588*a* of this title to be executed and filed shall contain a statement of the amount of such capital stock, and the number of shares into which it is divided; *and provided further*, that the rights and privileges to be accorded to stockholders, as distinct from those to be accorded to members at large of the corporation, and the obligations to be imposed upon stockholders in the same relation, shall be fixed and established in the by-laws of each of such corporations.

Trustees, etc.

SEC. 588*d*. Corporations formed under this title may confer upon a board of trustees or directors, or upon a body to be styled the executive committee of the corporation, the right to exercise all or any portion of the corporate powers of the corporation; *provided*, that the certificate directed by section 588*a* of this title be executed and filed in those cases in which the right to exercise the corporate powers is confined to a board of trustees or directors, or to a body to be styled the executive committee of the corporation, shall state the fact, and also whether the right is limited or otherwise; and in such corporations the said certificate shall also state the number of such trustees or directors, or committee, and the names of those who shall have been selected to manage the affairs of the corporations for the first six months.

Real and personal estate.

SEC. 588*e*. Corporations formed under the provisions of this title shall be capable in law to lease, purchase, have, hold, use, take possession of, and enjoy, in fee simple or otherwise, any real or personal estate within this state necessary for the uses and purposes of such corporation, and the same to sell, lease, deed in trust, alien, and dispose of at their pleasure. All real estate owned by the corporation shall be held in the name of the same, and all conveyances made by such corporation shall be signed by the president and secretary, and attested by the corporate seal; *provided*, that no corporation formed under this title shall engage in any mercantile, commercial, or mechanical business.

By-laws.

SEC. 588*f*. The by-laws of all corporations formed under the provisions of this title, without capital stock, shall prescribe how members of the corporation shall be admitted, and how expelled, and how officers, agents, and servants shall be elected and appointed; and such provisions in the by-laws of any such corporation shall have full force and effect as between private parties and said corporation.

Meetings.

SEC. 588*g*. Corporations formed under the provisions of this title shall determine by their by-laws the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the manner of levying and collecting assessments, the officers of the same, and the manner of their election and appointment, and their tenure of office; and may prescribe suitable penalties for the violation of their by-laws, not exceeding in any case one hundred dollars for any one offense.

Power to levy assessments.

SEC. 588*h*. Corporations formed under the provisions of this title, having no board of trustees or directors, or executive committee, shall have power to levy and collect from the members thereof, for the purpose of paying the proper and legal expenses of such corporation, assessments in the manner which may be prescribed by the by-laws of such corporation, and not otherwise.

Existing corporations may take benefit of this title, how.

SEC. 588*i*. Any existing corporation, association, or institution formed for either of the purposes contemplated by this

title, may, by a vote of a majority of the members voting at a meeting called specially for the purpose, become entitled to the benefit thereof, on filing the certificate required; *provided*, a notice of the meeting and its object shall be published in a paper of general circulation in the county in which the principal place of business of such corporation, association, or institution is located, for at least two weeks previous to the day on which such meeting is to be held; *and provided further*, that the certificate herein provided to be filed shall be signed and acknowledged by at least five of the members of such corporation, association, or institution, and contain a list of the members who desire to become members. And upon the filing of such certificate the persons signing and acknowledging the same, and those named therein, and such persons as shall thereafter become their associates or successors, shall be a body politic and corporate, with all the powers and privileges conferred by this title, and shall thereupon succeed and become entitled to all the rights, franchises, and property of such corporation, association, or institution.

TITLE XI*b*.

COÖPERATIVE ASSOCIATIONS.

Section 589. How formed.
589*a*. Rights and liabilities of members.
589*b*. Articles of association.
589*c*. By-laws, meetings and elections.
589*d*. By-laws to be recorded.
589*e*. Property subject to execution.
589*f*. Business may be changed.
589*g*. Profits, how divided.
589*h*. Associations, powers of.
589*i*. Associations may be consolidated.
589*j*. Associations may be dissolved.
589*k*. Rights of attorney-general to bring suit.
589*l*. Lawful business defined.

How formed.

SEC. 589. It shall be lawful for five or more persons to form a coöperative association for the purpose of transacting any lawful business. Such association shall not have or issue any capital stock, but shall issue membership certificates to each member thereof, and such membership certificates cannot be assigned, so that the transferee thereof can by such transfer become a member of the association, except by the resolution of the board of directors of the association. But by the

resolution or consent of the board of directors such certificates may be transferred, so that the transferee may become a member in lieu of the last former holder thereof.

COMMISSIONERS' NOTE: This and the following sections, to and including section 589*i*, is carried into the Civil Code, from the act approved March 27, 1895 (Stats. 1895, 221).

Rights and liabilities of members.

SEC. 589*a*. In such association the rights and interest of all members shall be equal, and no member can have or acquire a greater interest therein than any other member possesses. At every election held pursuant to the by-laws such member shall be entitled to cast one vote and no more. All persons above the age of eighteen years, regardless of sex, shall be eligible to membership, if otherwise qualified and elected as the by-laws may provide. The by-laws shall provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually or personally liable for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or installments which have, before such insolvency, become due from such member to the association, pursuant to its by-laws.

Articles of association.

SEC. 589*b*. Every association formed under this title shall prepare articles of association, in writing, which shall set forth: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist (not to exceed fifty years), the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid such sum, and that the interest and right of each member therein is to be equal. Such articles of association must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged shall be filed in the office of the secretary of state, who shall furnish a certified copy thereof, which shall be filed in the office of the county clerk of the county where the principal business of such association is to be transacted; and from the time of such filing in the office of said county clerk the associ-

ation shall be complete, and shall have and exercise all the powers for which it was formed.

By-laws, meetings, and elections.

SEC. 589*c*. Every association formed under this title must, within forty days after filing its articles of incorporation, adopt by-laws for its government and the management of its affairs, not inconsistent with the provisions of this title. A majority vote of the members of such association shall be required in the adoption thereof; whereupon, with the signatures of all members assenting thereto, they shall be recorded as required by section 589*d*. Amendments thereto may be made, on a majority vote, in such manner as the by-laws may provide, after notice has been given to each member that such have been proposed. Such by-laws must provide:

1. The meetings of the association;

2. The number of directors, or officers other than directors, if any;

3. The election and qualification of the directors, officers, and members; *provided*, that voting at such election may be by ballot forwarded by mail, or otherwise, guarded in such manner as shall secure the secrecy thereof;

4. The filling of vacancies;

5. The removal of directors and officers;

6. The conditions upon which the directors may exercise the powers conferred by this title; *provided*, that no act shall be valid unless ordered or performed by a majority of the directors;

7. The compensation of directors and officers;

8. The conditions upon which membership may be retained, and the penalty for violations thereof, subject to the right of any member who has lost, forfeited or been deprived of his membership by virtue of any such violation or otherwise, to have the board of directors appraise his interest in the same in either money, property, or labor, in such manner as the by-laws shall prescribe, and to have and receive the money, property, or labor so awarded to him, paid, delivered, or performed, to, or for him, within forty days after the forfeiture, or loss of such membership from any cause;

9. The amount of membership fee, and the dues, or labor which each member shall pay, or perform, if any, and the manner of enforcing the collection or performance of the same;

10. The manner in which a member may withdraw from such association, and how his interest therein shall be ascertained, either in money, property, or labor, and when the same shall be paid, or delivered, as the case may be;

11. The method of sale of such interest, either voluntarily, or as a penalty;

12. The manner of ascertaining the value of the interest of a deceased member, and providing for the payment or delivery to the heirs or legal representatives of such deceased member, of such money, property, or labor, as the case may be;

13. For such other matters as the best interests of the association may require.

By-laws to be recorded.

SEC. 589*d*. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy, certified by the directors, must be filed in the office of the county clerk where the principal business is transacted.

Property subject to execution.

SEC. 589*e*. The property of such association shall be subject to judgment and execution for the lawful debts of the association. The interest of a member in such association, if sold upon execution or any judicial order whatever, cannot authorize the purchaser to have any right, except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors shall choose to pay or settle the matter after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine.

Business may be changed.

SEC. 589*f*. The purpose of the business may be altered, changed, modified, enlarged, or diminished, by a vote of two thirds of all the members at a special election to be called for such purpose, of which notice must be given as the by-laws shall provide for in election of directors.

Profits, how divided.

SEC. 589*g*. The by-laws shall provide for the time and manner in which profits shall be divided between the members, and what proportion of the profits, if any, shall be added to the common property or funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or installment of earnings, at their discretion.

Powers of associations.

SEC. 589*h*. Every association formed under this title shall have power of succession by its corporate name for fifty years; to, in such name, sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey, real and personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide; to trade, barter, buy, sell, exchange, and do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed.

Associations may be consolidated.

SEC. 589*i*. Two or more associations formed and existing under this title may be consolidated upon such terms, for such purposes, and by such name, as may be agreed upon, in writing, signed by two thirds of the members of each such association. Such agreement must state all the matters necessary to be set forth in the articles of association, must be acknowledged by the signers before an officer competent to take an acknowledgment of deeds in this state, be filed in the office of the secretary of state, and a certified copy thereof filed in the office of the county clerk of the county where its principal business is to be transacted. From and after the filing of such certified copy the former associations shall cease to exist, and the consolidated association shall succeed to and be possessed of all the rights, interests, property, duties, and powers of the former associations, and those powers prescribed in the said agreement, subject to all the liabilities and obligations of the former associations, and to the provisions of this title.

Associations may be dissolved.

SEC. 589*j*. Any association formed or consolidated under this title may be dissolved and its affairs wound up voluntarily by the written request of two thirds of the members. Such request shall be directed to the directors, and shall specify reasons why the winding up of the affairs of the association is

deemed advisable, and shall name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom shall thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors shall cease and the persons appointed shall proceed to wind up the association, and realize upon its assets, and pay its debts, and divide the residue of its money among the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association shall be deemed dissolved.

Rights of attorney-general to bring suit.

SEC. 589*k*. The right of any association claiming to be organized under this title to do business may be inquired into by quo warranto, at the suit of the attorney-general of this state, but not otherwise.

Lawful business defined.

SEC. 589*l*. The words "lawful business" shall include every kind of lawful effort for business, educational, industrial, benevolent, social, or political purposes, whether conducted for profit or not.

TITLE XII.

RELIGIOUS, SOCIAL, AND BENEVOLENT CORPORATIONS.

Section 593. Corporations other than for profit, how formed.
594. What facts to be set out in articles of incorporation.
595. What amount of real estate may be owned by.
596. What additional real estate may be held by certain societies.
597. Directors to make verified report annually.
598. Sale and mortgage of real estate.
599. By-laws.
600. Members admitted after incorporation.
601. Rights transferred by membership, how transferred.
602. Religious societies may become sole corporations.
603. Churches, how incorporated.
604. Same.

Corporations other than for profit, how formed.

SEC. 593. Any number of persons associated together for any purpose, where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may,

in accordance with the rules, regulations, or discipline of such association, elect directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in this title.

COMMISSIONERS' NOTE: The word "part" has been substituted by "title."

What facts to be set out in articles of incorporation.

SEC. 594. In addition to the requirements of section 290, the articles of incorporation of any association mentioned in the preceding section must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

What amount of real estate may be owned by.

SEC. 595. All such corporations may hold all the property of the association owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association and providing burial ground for its deceased members, not to exceed six whole lots in any city or town, nor more than twenty acres in the country; the annual increase, income, or profit whereof must not exceed fifty thousand dollars; *provided*, that any such corporation now or hereafter having, and having had continuously for the next preceding three years, the care, custody, control, and maintenance each year, upon an annual average, of not less than one hundred orphans, half-orphans, and indigent minor children at any one orphan asylum, shall be entitled and allowed to own and possess any number of acres not exceeding one hundred and sixty acres of land in the country, outside of any incorporated city or town, and the annual income or profit of which does not exceed fifty thousand dollars; *and provided, further*, such orphan asylum shall be situated on such lands; *and provided, further*, that the limitations herein provided for shall not apply to corporations formed or to be formed, under section 690, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes.

COMMISSIONERS' NOTE: The words "of this code," following, in present section, the figures 690 omitted.

What additional real estate may be held by certain societies.

SEC. 596. In addition to that provided for in the preceding section, friendly societies and pioneer associations may hold

such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. In case any such corporation is the owner, by donation or purchase, of more lands than herein or in the preceding section provided for, such surplus must be sold and conveyed by the corporation within five years after its acquisition. Such sale may be made without the order or decree of the superior court, as hereinafter provided.

Directors to make verified report annually.

SEC. 597. The directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the condition thereof, to the members of the association for which they are acting.

Sale and mortgage of real estate.

SEC. 598. Corporations of the character mentioned in section 593 may mortgage or sell the real property held by them, and may secure the payment of indebtedness by deed of trust or mortgage upon their real property, upon obtaining an order for that purpose from the superior court held in the county, or city and county, in which the property is situated. The corporations above mentioned may also issue bonds, payable at any time within twenty years, as evidence of the indebtedness secured by mortgage or deed of trust. Before making the order, proof must be made to the satisfaction of the court, that notice of the application for leave to sell or mortgage or execute a deed of trust has been given by publication in such manner and for such time as the court or the judge thereof has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise. But nothing herein contained shall prohibit or prevent the trustees or directors of such corporation, under such rules and regulations as they may adopt, from disposing of burial plots situated in grounds of such corporation dedicated for burial purposes, without making such application to, or obtaining an order of court.

COMMISSIONERS' NOTE: The expression "or city and county," and the word "thereof" inserted. The word "from" preceding the word "court," at end of section, omitted, and the word "of" inserted.

By-laws.

SEC. 599. Corporations now organized or that may hereafter be organized for purposes other than profit, may, either

in their by-laws, ordinances, constitutions, or articles of incorporation, provide:

1. The qualification of members, mode of election or appointment, and terms of admission to membership;

2. The fees of admission and dues to be paid to their treasury by members;

3. The number of persons that shall constitute a quorum at any meeting of the corporation, and that an election of officers of the corporation by a meeting so constituted, or the appointment or selection of such officers, or any of them, in any manner required by the rules, regulations, or discipline of any specified religious denomination, society, or church, shall be as valid as if made at an election at which a majority of the members of the corporation were present and voted;

4. The expulsion and suspension of members for misconduct or non-payment of dues, also for restoration to membership;

5. A special method of organizing the board of directors, and a special method of increasing or diminishing the number of directors within the limits as to number prescribed by section 593;

6. Contracting, securing, paying, and limiting the amount of their indebtedness;

7. That the rules, regulations, or discipline for the time being of any specified religious denomination, society, or church, shall always be a part of their by-laws, ordinances, constitutions, or articles of incorporations;

8. That corporations for religious and benevolent purposes shall keep such records as may be necessary;

9. Other regulations not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

COMMISSIONERS' NOTE: The word "for," at the end of subdivision 1, and the words "of this code," at the end of subdivision 5, are stricken out. The provision of the proposed subdivision 8, taken from section 378, *ante*, is inserted, and the present subdivision of that number is designated as subdivision 9.

Members admitted after incorporation.

SEC. 600. Members admitted after incorporation have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

Rights conferred by membership, how transferred.

SEC. 601. No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

Religious societies may become sole corporations.

SEC. 602. Whenever the rules, regulations, or discipline of any religious denomination, society, or church so require, for the administration of the temporalities thereof, and the management of the estate and property thereof, it shall be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society, or church, to become a sole corporation, in the manner prescribed in this title, as nearly as may be, and with all the powers and duties, and for the uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed. Every corporation sole shall, however, for the purposes of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend, in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money, and give promissory notes therefor, and to secure the payment thereof by mortgage or other lien upon property, real or personal; to buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, and without the order of any court; to receive bequests and devises for its own use or upon trusts to the same extent as natural persons may; and to appoint attorneys in fact. The articles of incorporation to be filed shall set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest or presiding elder, is required by the rules, regulations, or discipline of such denomination, society, or church to be filled, which statement shall be verified, and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent, of such corporation, it shall be sufficient to record with the clerk of the county in which such bishop, chief priest, or presiding elder resides, the original or a copy of his commission, or certificate of letters of election or appointment, duly attested; *provided*, all property held by such bishop, chief priest, or presiding elder shall be in trust for the use, purpose, and behoof of his religious denomination, society or church. The limitation in section 595 shall not apply to corporations formed under this section when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. Any judge of the superior court of the county, or city and county, in which any corporation is formed under this title, shall at all times have

access to the books of such corporation. Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under this title by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or amended articles of incorporation, in the form required by this title, and as prescribed by section 287; and from and after the filing of such certificate or amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities, and provisions in this title expressed.

COMMISSIONERS' NOTE: The term "by affidavit" in the present section, is omitted, as unnecessary. The expression "or city and county" inserted. The word "chapter" has been substituted by "title."

Churches, how incorporated.

SEC. 603. Whenever the regulations, rules, or discipline of any church or religious society require, for the administration of the temporalities thereof, or for the management of the property or estate thereof, any diocese, synod, or district organization of such church or religious society may elect directors and become an incorporation in the manner prescribed in this title, and with all the powers and duties, and for the uses and purposes in this title provided for benevolent and religious corporations, and subject to all the conditions, limitations, and provisions therein prescribed, except as otherwise provided in this section; *provided*, that directors of such corporation may be elected, and that the by-laws for its government may be made and amended by the convention, synod, or other representative body of such church or religious society in and for such district, in accordance with the constitution, by-laws, discipline, or regulation thereof, at any regular meeting or special meeting called for that purpose; *and provided*, the certificate of incorporation and of the election of directors to be filed shall be sufficiently signed and attested by the signature of the presiding officer and secretary of the representative convention, synod, or such other body, in which such election is held; *and provided*, all property held by such corporation shall be in trust for the use, benefit, and purpose of the church, or religious society, by and for which such corporation was formed, and in and of which such diocese, synod, or other district, is an organized or constituent part; and that the limitation in section 595 shall not apply to corporations formed under this section, when the land is held or used for churches, hospitals, schools, colleges, asylums, parsonages, or cemetery purposes.

COMMISSIONERS' NOTE: The prefix "in" before the word "corporation" has been omitted in four places in this section and the word "therein" substituted for the term "in said title."

Same.

SEC. 604. Any church or other religious association in this state, composed of two or more constituent parishes, missions, congregations, or societies having a common convention, synod, council, or other representative legislative body, may be incorporated by such representative body in the manner prescribed in this title, and subject to all the conditions, limitations, and provisions therein prescribed, except as otherwise provided in this section. The representative body of such religious association electing to incorporate the same, shall determine the name of the proposed corporation, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, and the number of its directors, and shall elect its directors for the first year. The articles of incorporation need only be signed and acknowledged by the presiding officer and secretary of such representative body; and, in addition to the requirements of section 290, shall set forth the proceedings herein prescribed for said representative body, and that the same were duly had in accordance with the constitution, canons, rules, or regulations governing the other proceedings of said representative body and the time and place thereof. The directors of such corporation shall be elected annually by the representative body of the association. The representative body providing for such incorporation shall frame by-laws for the corporation, and such by-laws may be repealed or amended, or new by-laws may be adopted, by any subsequent representative body in accordance with the constitution, canons, rules, or regulations governing the other proceedings of such representative body. Such corporation may hold and administer not only the common property, funds, and money of such association, but also the property, funds, and money of any constituent parish, mission, congregation, or society. The limitation in section 595 shall not apply to corporations formed under this section when the land is held or used for churches, hospitals, schools, colleges, asylums, parsonages, or cemetery purposes.

COMMISSIONERS' NOTE: The term "under this part and subject to the provisions of this title," found in the first sentence of the present section, has been omitted, and the following inserted in lieu thereof, to harmonize with section 602, *ante:* "in the manner prescribed in this title and subject to all the limitations and provisions therein prescribed."

TITLE XII*a*.

CORPORATIONS FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS.

Section 607. Incorporation of.
607*a*. What property may take and hold.
607*b*. May prefer complaint and prosecute offenders.
607*c*. Shall be aided by officers and magistrates.
607*d*. The provisions of this title shall extend to what corporations, etc.
607*e*. Fines, penalties, forfeitures, to inure to such corporations.
607*f*. Officers and members of corporations empowered to do what.
607*g*. Begging, homeless, destitute, and vagabond children to be committed to orphan asylum, when.

Incorporation of.

SEC. 607. Corporations may be formed by any number of persons not less than five, a majority of whom shall be citizens and residents of this state, under the general provisions of this code, for the purpose of the prevention of cruelty to children or animals, or both, and the corporation first formed therefor in any county of this state shall be the one entitled to the benefits and privileges of this title in said county.

What property may take and hold.

SEC. 607*a*. Every such corporation may take and hold, by gift, purchase, devise, or bequest, any property, real or personal, and dispose of the same at its pleasure; *provided*, such corporation shall not, in its corporate capacity, hold real estate the yearly income derived from which shall exceed the sum of fifty thousand dollars.

May prefer complaint and prosecute offenders.

SEC. 607*b*. Any such corporation, or member or officer thereof, may prefer a complaint against any person or persons, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children, or animals, and may aid in the prosecution of any such offender before such court or magistrate in any proceeding taken.

Shall be aided by officers and magistrates.

SEC. 607*c*. All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid any such corporation, its officers, members, and agents, in the enforcement of all laws which are now or may be enacted hereafter relating to or affecting children or animals.

The provisions of this title shall extend to what corporations.

SEC. 607*d*. The provisions of this title shall extend to all corporations heretofore formed and existing for the prevention of cruelty to children or animals, but shall not extend or apply to any association, society, or corporation which shall use or specify a name or style the same, or substantially the same, as that of any previously existing society or corporation in this state organized for a like purpose.

Fines, penalties, forfeitures, to inure to such corporations.

SEC. 607*e*. All fines, penalties, and forfeitures imposed and collected in any county of this state under the provisions of any law of this state, now or hereafter enacted, relating to or affecting children, or animals, in every case where the prosecution was instituted, aided, or conducted by any such corporation or society now or hereafter existing, shall, except where otherwise provided, inure to such corporation or society in aid of the purposes for which it was incorporated or organized.

Officers and members of corporations empowered to do what.

SEC. 607*f*. All members and agents, and all officers of each or any of such corporations or societies, as shall by the trustees thereof be duly authorized in writing, approved by a judge of the superior court of the county, or city and county, in which such corporation or society was organized, and sworn in the same manner as are constables or peace officers, shall have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any child or dumb animal, and shall use such force as shall be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any penal law relating to or affecting children or animals in the same manner as a constable or other peace officer; and may carry the same or similar weapons that such officers are authorized to carry; *provided*, that all such members and agents shall, when making such arrests, exhibit and expose a suitable badge to be adopted by said corporation or society. All persons resisting said especially appointed officers, as such, shall upon conviction be deemed guilty of a misdemeanor.

Begging, homeless, destitute, and vagabond children to be committed to orphan asylum, when.

SEC. 607*g*. Any child under the age of sixteen years that comes within any of the following descriptions named:

1. That is found begging or receiving or gathering alms (whether actually begging, or under the pretext of selling or

offering or sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms;

2. That is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;

3. That is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;

4. That frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dance houses, concert saloons, theaters, and variety halls, or other places of amusement where spirituous, malt, or vinous liquors are sold, without parent or guardian;

5. That is engaged or used for or in any business, for exhibition, or vocation, or purpose, in violation of any law of this state; shall be arrested and brought before a court or magistrate, and when, upon examination before such court or magistrate, it shall appear that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions; or when, upon the examination or conviction of any person having the custody of a child of a criminal assault upon it, the court or magistrate before whom such examination or conviction is had shall deem it desirable for the welfare of such child that the person so examined or convicted should be deprived of its custody thereafter; such court or magistrate, when it shall deem it expedient for the welfare of such child, may commit such child to an orphan asylum, corporation, or society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. Any corporation, organized under this title, or now existing, for the prevention of cruelty to children, or any officer or member thereof, may institute proceedings under this section for the welfare of any such child.

COMMISSIONERS' NOTE: Title XII*a* comprises two acts combined, entitled, respectively: "An act for the more effectual prevention of cruelty to animals," approved March 23, 1893 (Stats. 1893, 302), and "An act for the incorporation of societies for the prevention of cruelty to children," approved April 3, 1876 (Stats. 1875-76, 830). The penal sections of each of said acts have been carried into the Penal Code (sections ——), which see.

TITLE XIII.

CEMETERY CORPORATIONS.

Section 608. How much land may be held, and how disposed of.
608*a*. Manner of execution of deeds by.
609. Who are members eligible to vote and hold office.
610. May hold personal property, to what amount. How disposed of.
611. May issue bonds to pay for grounds. Proceeds of sales, how disposed of.
612. May hold property. Income, how applied.
613. Interment in lot and effect thereof. Transfer of rights only made, how.
614. Lot owners previous to the purchase to be members of the corporation.
615. May sell lands, how.

How much land may be held, and how disposed of.

SEC. 608. Corporations organized to establish and maintain cemeteries may take, by purchase, donation, or devise, land, not exceeding three hundred and twenty acres in extent, in the county wherein their articles of incorporation are filed, or in an adjoining county, and may employ any surplus moneys in the treasury thereof for such purpose; such lands to be held and occupied exclusively as a cemetery for the burial of the dead. The lands must be surveyed and subdivided into lots or plats, avenues, and walks, under order of the directors, and a map thereof filed in the office of the recorder of the county wherein the lands are situated. Thereafter, upon such terms and subject to such conditions and restrictions, to be inserted in the conveyances, as the by-laws or directors may prescribe, the directors may sell and convey the lots or plats to purchasers.

Manner of execution of deeds by.

SEC. 608*a*. All deeds or conveyances executed by cemetery associations or incorporations within this state, shall be executed in the name of the corporation or association, under the seal thereof by the president, or vice-president, and secretary thereof.

COMMISSIONERS' NOTE: This section is based on section 1 of an act approved March 23, 1895 (Stats. 1895, 75).

Who are members eligible to vote and hold office.

SEC. 609. Every person of full age, who is proprietor of a lot or plat in the cemetery of the corporation, containing not less than two hundred square feet of land, or, if there be more

than one proprietor of any such lot, then such of the proprietors as the majority of joint proprietors designate, may, in person or by proxy, cast one vote at all elections had by the corporation for directors, or any other purpose, and is eligible to any office of the corporation. At each annual meeting or election, the directors must make a report to the proprietors of all their doings, and of the management and condition of the property and concerns of the corporation.

May hold personal property, to what amount. How disposed of.

SEC. 610. Such corporations may hold personal property to an amount not exceeding five thousand dollars, in addition to the surplus remaining from the sales of lots or plats after the payment required in the succeeding section. Such surplus must be disposed of in the improvement, embellishment, and preservation of the cemetery, and paying incidental expenses of the corporation, and in no other manner.

May issue bonds to pay for grounds. Proceeds of sales, how disposed of.

SEC. 611. Such corporations may issue their bonds, bearing interest not exceeding twelve per cent per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery, and not otherwise. Sixty per cent of the proceeds of sales of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest. Such corporations may also agree with the person or persons from whom cemetery lands shall be purchased, to pay for such lands, as the purchase price thereof, any specified share or portion, not exceeding one half, of the proceeds of all sales of lots or plats made from such lands; such payments to be made at such intervals as may be agreed upon. In all cases where cemetery lands shall be purchased and agreed to be paid for in the manner last provided, the prices for lots or plats specified in the by-laws, rules, or regulations first adopted by such association, or prescribed in the agreement between the cemetery and the person or persons from whom the cemetery lands were purchased, shall not be changed without the written consent of a majority in interest of the persons from whom such lands were purchased, their heirs, representatives, and assigns.

May hold property. Income, how applied.

SEC. 612. Any corporation organized to establish and maintain, or to improve, a cemetery, may take and hold any property bequeathed, granted, or given to it in trust, to apply the

proceeds or income thereof to any and all of the following purposes: To the improvement or embellishment of such cemetery, or of any lot therein; or to the erection, renewal, repair, or preservation of any monument, fence, or other structure in such cemetery; or to the planting or cultivation of trees, shrubs, or plants in or around such cemetery, or any lot therein; or to the improving, ornamenting, or embellishing of such cemetery, or any lot therein, in any other mode or manner not inconsistent with the purposes for which said cemetery was established or is being maintained. Such property, and the property and the proceeds or income thereof, shall be invested and reinvested by such corporation, in the bonds of the United States, or of this state, or of any municipality of this state, or in mortgages on real estate, if such investment be not repugnant to the terms of the bequest, grant, or gift.

COMMISSIONERS' NOTE: This section is transposed and inserted in lieu of section 512, containing some additional matter, although substantially the same.

Interment in lot and effect thereof. Transfer of rights only made, how.

SEC. 613. Whenever an interment is made in any lot or plat transferred to individual owners by the corporation, the same thereby becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner. When there are several owners of interests in such lot or plat, one or more may acquire by purchase the interest of others interested in the fee simple title thereof, but no one not an owner acquires interest or right of burial therein by purchase; nor must any one be buried in any such lot or plat not at the time owning an interest therein, or who is not a relative of such owner, or of his wife, except by consent of all jointly interested; *provided, however*, that when all the bodies buried in any such lot shall have been removed therefrom, with the consent of the then owners of such lot, it shall be lawful for the then owners of such lot to sell and transfer the same by deed; and any such sale and transfer, heretofore made, is hereby declared to be valid and effectual to transfer the title to the purchaser, any law to the contrary thereof notwithstanding.

Lot owners previous to the purchase to be members of the corporation.

SEC. 614. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation,

with all the privileges a purchase of a lot from the corporation confers.

May sell lands, how.

SEC. 615. Cemetery corporations may sell lands held by them upon obtaining an order for that purpose from the superior court of the county where the lands are situated. Before making the order, proof must be made to the satisfaction of the court, that notice of the application for leave to sell has been given by publication in such manner and for such times as the court has directed, and that the lands are not required for and are not in use for burial purposes, and that it is for the interests of the corporation that such lands be sold. The application must be made by petition, and any member of the corporation may oppose the granting of the order, by affidavit or otherwise.

TITLE XIV.

AGRICULTURAL FAIR CORPORATIONS.

Section 620. May acquire and hold real estate, how much.
621. Shall not contract debts or liabilities exceeding amount in treasury.
622. Not for profit. May fix fees, etc., for membership.

May acquire and hold real estate, how much.

SEC. 620. Agricultural fair corporations may purchase, hold, or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon. And may sell, lease, or otherwise dispose of the same at pleasure. This real estate must be held for the purpose of erecting buildings, and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock-raising, and general domestic industry.

Shall not contract debts or liabilities exceeding amount in treasury.

SEC. 621. Such corporation must not contract any debt or liability in excess of the amount of money in the treasury at the time of contract, except for the purchase of real property, for which they may create a debt not exceeding five thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

Not for profit. May fix fee, etc., for membership.

SEC. 622. Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to the exhibitors and fees for membership, which charges, together with the term of membership and mode of acquiring the same, must be provided for in their by-laws. Such fees must never be greater than to raise sufficient revenue to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

TITLE XV.

GAS AND ELECTRIC LIGHT CORPORATIONS.

Section 628. Right of all persons and corporations to furnish municipalities with gas and electric light, subject to control of municipalities.
628*a*. All meters to be proved and sealed by inspector of gas meters.
629. Gas to be supplied on written application. Damages for refusal.
630. When corporations may refuse to supply gas.
631. Agent of corporation may inspect meters.
632. When persons neglect to pay, gas may be shut off.
632*a*. Right to erect poles, etc.
632*b*. Title applicable to natural persons as well as corporations.

Right of all persons and corporations to furnish municipalities with gas and electric light, subject to control of municipalities.

SEC. 628. In any city and county, city, or town, where there are no public works owned and controlled by the municipality for supplying the same with artificial light, any individual, or any company, duly incorporated for such purpose, under and by authority of the laws of this state, shall, under the direction of the superintendent of streets, town marshal, or other officer in control thereof, and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets, thoroughfares, ways, and alleys thereof, and of laying down pipes and wires therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and county, city, or town, and its inhabitants, either with gas light, electric light, or other light, upon the condition that the municipal government shall have the right to regulate the charges thereof.

COMMISSIONERS' NOTE: Section 628 is a new section. Old section 628 conflicts with section 19, Article II, of the constitution. See note to section 548, *ante*. (62 Cal. 209; 60 Cal. 341.)

All meters to be proved and sealed by inspector of gas meters.

SEC. 628*a*. In counties, cities and counties, cities, or towns, having an official inspector of meters, no person or corporation shall furnish or use any gas meter, or electric meter, which has not been proved and sealed by such inspector of meters.

COMMISSIONERS' NOTE: Section 628*a* is that part of old section 628 not in conflict with the constitution.

Gas to be supplied on written application. Damages for refusal.

SEC. 629. Upon the application in writing of the owner or occupant of any dwelling or premises distant not more than one hundred feet from any main, or direct or primary wire, of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas or electricity as required for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas or electricity required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars per day as liquidated damages for every day such refusal or neglect continues thereafter.

When corporations may refuse to supply gas.

SEC. 630. No corporation is required to lay service pipe or wires where serious obstacles exist to laying them, unless the applicant, if required, deposits in advance, with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or wires, or his proportion thereof.

Agent of corporation may inspect meters.

SEC. 631. Any owner or manager of gas or electric light works, or agent of such owner or manager, exhibiting written authority, signed by such owner or manager, or any agent of a gas or electric light corporation exhibiting written authority signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas or electricity supplied by such owner or corporation, to inspect the gas meters or electric meters therein to ascertain the quantity of gas or electricity supplied or consumed. Every owner or occupant of such building who hinders or prevents such entry or inspection must pay to the owner or corporation the sum of fifty dollars as liquidated damages.

When persons neglect to pay, gas may be shut off.

SEC. 632. All gas or electric light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes, wires, or fittings, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employé of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, of any day, and remove therefrom any property of the corporation used in supplying gas or electricity.

Right to erect poles, etc.

SEC. 632*a*. Every corporation shall have power to lay, erect, and construct suitable wires or other conductors, with the necessary poles, pipes, or other fixtures, in, on, over, and under the public highways, streets, thoroughfares, ways, and alleys of any county, city and county, city, or town, for conducting and distributing electricity for lighting and other purpose, to such county, city and county, city, or town, or the inhabitants thereof, with the consent of and under such reasonable regulations as the board of supervisors, or other legislative body, of such county, city and county, city, or town, may prescribe.

Title applicable to natural persons as well as corporations.

SEC. 632*b*. When gas or electric light works are owned, constructed, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations.

COMMISSIONERS' NOTE: This title is amended to harmonize with section 19, Article XI, of the constitution, and to apply to existing conditions.

TITLE XVI.

MUTUAL BUILDING AND LOAN ASSOCIATIONS.

Section 633. Formation and organization.
634. Capital stock, how paid in, amount, and how and when collected; dues, fines, etc.
635. Retiring free shares.
636. Maturity of stock.
637. Loans, premiums.
638. Rate of interest.
638*a*. Withdrawals.
639. Forfeiture. Arrears in payments.

Section 640. Purchase and sale of real estate.
641. Borrowing money.
642. Profits and losses.
643. Membership.
644. Annual report, and what it shall contain.
644*a*. Collection of fines or forfeitures, and deposit of same.
644*b*. Shall not transact business without license.
645. Foreign corporations, deposit by.
646. Electing to continue business.
647. Definition of.

COMMISSIONERS' NOTE: By an act of the legislature, approved March 31, 1891 (Stats. 1891, 252), all of the provisions of the Civil Code relating to land and building corporations were repealed, and new sections were enacted covering the entire subject. On March 23, 1893 (Stats. 1893, 229; amended Stats. 1895, 103), an act was adopted "creating a board of commissioners of the building and loan associations, and prescribing their duties and powers." The act as passed contained certain provisions which attempted also to regulate such building and loan associations, which was clearly unconstitutional, that subject not being included in the title. Being an attempt, however, at the latest expression of the legislative will, such provisions have been retained by incorporating them in the general provisions governing this class of corporations, and the remainder of the act creating the commissioners of these associations has been made a part of the Political Code. (Article XVI, Chapter III, Title I, Part III, section 583, *et seq.*)

Formation and organization.

SEC. 633. Corporations may be formed, subject to the provisions of this title, and with all rights, duties, and powers herein specified. Such corporations shall be known as mutual building and loan associations, and the words "mutual building and loan association" shall form part of the name of every such corporation. The articles of incorporation, in setting forth the purposes for which the corporation is formed, shall state that it is formed to encourage industry, frugality, home-building, and savings among the stockholders; the accumulation of savings; the loaning to its stockholders of the funds so accumulated, with the profits and earnings; and the repayment to each stockholder of his savings and profits and earnings, when they have accumulated to a certain sum, or at any time when he shall desire the same, as provided in the by-laws, or when the corporation shall desire to repay the same; and shall also state that it is formed for all the purposes specified in this title.

Capital stock, how paid in, amount, and how and when issued; dues, fines, etc.

SEC. 634. The capital stock of such corporations shall be paid in by the stockholders in regular, equal, periodical payments, at such times and in such amounts as shall be provided in the by-laws. Such periodical payments shall be called dues; and at or before a time to be stated in the by-laws each stockholder shall pay to the corporation, upon each share of stock

held by him, such an amount of dues as the by-laws shall provide; and the payment of dues shall so continue on each share of stock issued till it reaches its matured value, or is withdrawn, canceled, or forfeited. The capital stock shall consist of such accumulated dues, together with the earnings and profits of the corporation, and shall in no case exceed two million dollars, except as to corporations existing on March thirty-first, eighteen hundred and ninety-one. It shall be divided into shares of matured or par value of one hundred dollars or two hundred dollars each, as shall be provided in the articles of incorporation and fixed by the by-laws. Certificates of stock shall be issued to each stockholder on the first payment of dues by him. The shares shall be issued in yearly, half-yearly, or quarterly series, except in corporations existing on March thirty-first, eighteen hundred and ninety-one, in such amounts in each series, and at such times, as shall be determined by the board of directors. No share of a prior series shall be issued after the issuing of shares in a new series. Shares which have not been pledged as a security for the repayments of a loan shall be called free shares. Shares that have been so pledged shall be called pledged shares. All stock matured and surrendered or canceled in any series shall become the property of the corporation, and may be issued in any subsequent series. Payment of dues on shares of stock in each series shall commence from the time that shares began to be issued in such series. Any such corporation shall have power by its by-laws to impose and collect a fine from each stockholder not exceeding ten per cent of the defaulted amount, for every neglect or refusal to make his payments of dues, or premium, or interest, when due, and to impose and collect a like fine successively on every regular payday during such default. Every such corporation shall also have power to charge an entrance fee upon each share of stock issued, not exceeding ten cents on each share, and may also charge a transfer fee not exceeding ten cents on each share, all of which shall be paid into the treasury and accounted for as all other funds of the association; *provided*, that building and loan associations incorporated prior to March thirty-first, eighteen hundred and ninety-one, may continue to charge and dispose of such entrance and transfer fee as are prescribed by the by-laws of such corporation. Payment of dues or interest may be made in advance, but no association shall allow interest on such advanced payments at

a greater rate than six per cent per annum, nor for a longer period than one year.

Retiring free shares.

SEC. 635. The directors may, at their discretion, under the regulations prescribed in their by-laws, retire the free shares of any series of stock, at any time after four years from the date of their issue, by enforcing the withdrawal of the same; but whenever there shall remain in any series, at the expiration of five years after the date of its issue, an excess above one hundred free shares of the par value of two hundred dollars each, or two hundred free shares of the par value of one hundred dollars each, then it shall be the duty of the directors to retire annually twenty-five per cent of such excess existing at said expiration of five years after the date of its issue, so that no more than one hundred free shares shall remain in such series at the expiration of nine years from the date of its issue; *provided*, that no more than one half the monthly receipts be used for that purpose; and thereafter the directors may, in their discretion, retire such other free shares as they consider to the best interest of the association to retire; *provided*, that whenever, under the provisions of this section, the withdrawal of shares is to be enforced, the shares to be retired shall be determined by lot, drawn from all free shares in the series, as shall be regulated by the by-laws, and the holders thereof shall be paid the amount actually paid in, and the full amount of earnings at the date of last apportionment of profits.

Maturity of stock.

SEC. 636. When the stock in any series shall have reached its matured value, payment of dues thereon shall cease, and all of the stockholders in such series who have borrowed from the association shall be entitled to have their securities returned to them, and a satisfaction of the mortgages made by them to the association; and the holders of free shares of stock in such series shall be paid out of the funds of the association the matured value thereof, with such rate of interest as shall be determined by the by-laws from the time the board of directors shall declare such shares to have matured until paid; but at no time shall more than one third of the receipts of the association be applicable to the payment of matured shares, without the consent of the board of directors. The order of the payment of the matured shares shall be determined by the by-laws.

Loans, premiums.

SEC. 637. The moneys in the hands of the treasurer, and such sums as may be borrowed by the corporation for the purpose, shall be loaned out in open meeting to the member who shall bid the highest premium, or may be loaned at such premium as may be fixed from time to time by the board of directors; and the premium may be deducted from the amount of the loan, or such proportion may be deducted as the by-laws shall provide, and in that case the balance of said premium shall be payable in such installments as the by-laws shall determine; *provided, however*, that where the premium is payable in installments, the number of installments into which the same is divided shall be uniformly applicable to all loans made by the corporation, and shall be payable at the times and in the manner as provided in the by-laws; *and provided, further*, that in no case shall the amount loaned exceed the matured value of the shares pledged to secure the loan.

Rate of interest.

SEC. 638. The rate of interest on all loans may be fixed by the by-laws, but, in case the by-laws fail to fix the rate, then it shall be fixed from time to time by the board of directors. For every loan made, a note, or obligation, secured by a first mortgage or deed of trust upon unincumbered real estate, shall be given, accompanied by a transfer and pledge to the association of the shares borrowed upon, as collateral security for the payment of the loan; or, in lieu of the mortgage or deed of trust, there may be pledged and transferred to the association, for the payment of the loan, free shares, the withdrawal value of which, under the by-laws, at the time of such borrowing, shall exceed the amount borrowed, and interest thereon for six months. At the discretion of the board of directors a borrower may repay a loan and all arrears of interest, and fines thereon, at any time upon the surrender of the shares pledged for the loan.

Withdrawals.

SEC. 638*a*. Stockholders desiring to withdraw from any association, or to surrender a part or all of their stock, shall have power to do so by giving thirty days' notice in writing of such intention to withdraw. On the expiration of such notice, the stockholder so withdrawing shall be entitled to receive the full amount paid in by him or her, together with such proportion of the earnings thereon as the by-laws may provide, or as may have been fixed by the board of directors; *provided*, that not

more than one half of the monthly receipts in any one month shall be applied to withdrawals for that month, without the consent of the board of directors, and no shareholder shall be permitted to withdraw, whose stock is pledged as security to the association for a loan, until such loan is fully paid. Such withdrawals shall be paid in succession, in the order that the notices are given.

COMMISSIONERS' NOTE: The original of this section was section 19 of the act (Stats. 1893, 229) creating a board of commissioners of the building and loan associations, and prescribing their duties and powers. As this section pertains to the conduct and regulation of associations, and not to the duties or powers of the commissioners, it is inserted here, and omitted from the chapter which comprises the statute above referred to. See note at beginning of this title.

Forfeiture. Arrears in payments.

SEC. 639. Whenever any member shall be six months in arrears in the payment of his dues upon free shares, the secretary shall give him notice thereof, in writing, and a statement of his arrearages, by mailing the same to him at the last post-office address given by him to the association, and if he shall not pay the same within two months thereafter, the board of directors may, at their option, declare his shares forfeited; and at the time of such forfeiture the withdrawal value thereof shall be determined and stated, and the defaulting member shall be entitled to withdraw the same without interest, upon such notice as shall be required of a withdrawing shareholder. Whenever a borrowing member shall be six months in arrears in the payment of his dues, or interest, or premium, the whole loan shall become due at the option of the board of directors, and they may proceed to enforce collection upon securities held by the association; the withdrawal value at the time of the commencement of the action, of all shares pledged as collateral security for the loan shall be applied to the payment of the loan, and said shares, from that time, shall be deemed surrendered to the association.

COMMISSIONERS' NOTE: In the same statute the original section was repealed (Stats. 1891, 252) with the following proviso: "provided, however, that so far as the said sections relate to and govern building and loan associations heretofore incorporated and doing business under the Civil Code, the said sections shall continue in full force and validity." Said proviso is not retained herein, as it is not deemed desirable to continue in force statutes enacted at various times prior to this revision. See note at beginning of this title.

Purchase and sale of real estate.

SEC. 640. Any such association may purchase at any sale, public or private, any real estate upon which it may have a

mortgage, judgment, lien, or other incumbrance, or in which it may have an interest; and may sell, convey, lease, or mortgage the same at pleasure, to any person or persons.

Borrowing money.

SEC. 641. Any association organized or existing and conducting business in pursuance of the provisions of this title may borrow money for the purpose of making loans or paying withdrawals.

Profits and losses.

SEC. 642. Profits and losses shall be apportioned at least annually, and shall be apportioned to all the shares in each series outstanding at the time of such apportionment, according to the actual value of such shares as distinguished from their withdrawal value.

Membership.

SEC. 643. Any person of full age and sound mind may become a member of the association by taking one or more shares therein, and subscribing to the by-laws, and annexing to his signature his post-office address. A minor may hold shares in the name of the parent, guardian, or next friend as trustee.

COMMISSIONERS' NOTE: The last clause of the above section, providing for the exemption of $1,000 worth of stock, has been stricken out, as the Commissioners have prepared an amendment to section 670, Code of Civil Procedure, so as to include said provision therein.

Annual report and what it shall contain.

SEC. 644. Every building and loan association doing business in this state shall, once in every year, to wit: within thirty days after the expiration of its annual fiscal term, make a report, in writing, to the commissioners of building and loan associations, verified by the oath of its president and secretary, showing accurately the financial condition of such association at the close of said term. The report shall be in such form as the commissioners shall prescribe, upon blanks by them furnished for that purpose, and shall specify the following particulars, namely: name of the corporation, place where located, authorized capital stock, amount of stock paid in, the names of the directors, the amount of capital stock held by each, the amount due to shareholders, the amount and character of all other liabilities, cash on hand, and the number and value of shares in each and every series of stock issued by the association. All money received or disbursed by such association

shall be duly accounted for. Any association failing to file the annual report within the time specified herein, shall be subject to a penalty of ten dollars per day for each and every day such report shall be delayed or withheld. Every association shall make such further reports as the said commissioners may require, and said commissioners may, at any time, examine into the affairs of any and every of said associations. Any person willfully swearing falsely in making or verifying said or any reports required by the provisions of this section, shall be guilty of perjury.

COMMISSIONERS' NOTE: This section was drawn chiefly from section 18 of the act creating the board of commissioners of building and loan associations (Stats. 1895, 103). The provisions as to further reports and as to false swearing are from section 644, as amended in 1891 (Stats. 1891, 252). See also note to section 639, *ante*.

Collection of fines or forfeitures, and deposit of same.

SEC. 644*a*. The collection of all moneys assessed, as herein provided, for the annual expenses, or forfeitable as fines for failure to make reports as herein specified, and due from any corporation or association coming within the provisions of this title, may be enforced by an action instituted in any court of competent jurisdiction, and all moneys collected or received by the commissioners for building and loan associations shall be deposited with the state treasurer, to the credit of a fund to be known and designated "building and loan association inspection fund."

COMMISSIONERS' NOTE: The original of this and the following section were sections 16 and 17 of an act creating a board of building and loan commissioners (Stats. 1893, 229).

Shall not transact business without license.

SEC. 644*b*. No association shall transact business in this state without first procuring from the commissioners of building and loan associations a certificate of authority or license to do so. To procure such authority it must file with the said commissioners a certified copy of its articles of incorporation, constitution, and by-laws, and all other printed rules and regulations relating to its methods of conducting business, and of all subsequent amendment or changes thereto, and otherwise comply with all requirements of law. No association, after the expiration of the term for which a license has been granted to it by the commissioners of building and loan associations shall continue to transact the business of a building and loan association without first procuring from said commissioners a renewal of such license on the terms provided for in this title;

and any corporation violating this provision shall forfeit the sum of ten dollars per day during the continuance of the offense; and any violation of this section by any officer of such association shall be a misdemeanor.

COMMISSIONERS' NOTE: See note to preceding section.

Foreign corporations, deposit by.

SEC. 645. No mutual building and loan association, or company, association, or corporation organized under the laws of any other state or territory or country to carry on a business of a like character to that authorized by this title, shall be allowed to do business or to sell their stock in this state without first complying with the provisions of section 358*a* of this code, and having deposited with the state controller the sum of fifty thousand dollars in money, or county or municipal bonds of this state, or in first mortgages upon real estate located within this state, as a guarantee fund for the protection and indemnity of residents of the state of California, with whom such companies, associations, or corporations shall do business; the fund so deposited to be paid by the custodian thereof to the residents of California only, and not then until proof of claim by final judgment has been filed with the custodian of said fund against such foreign company, association, or corporation. Any of the securities so deposited may be withdrawn at any time upon others, herein provided for, of like amount, being substituted in lieu thereof. Any person or persons who shall be found in this state as agent, or in any other capacity, representing such foreign company, association, or corporation, which has not complied with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

Electing to continue business.

SEC. 646. Any building and loan association, now existing and heretofore incorporated, desiring to continue its existence under the provisions of this title, may do so if the holders of a majority of the stock at their regular annual meeting, or at a special meeting of the stockholders called for that purpose, shall so elect. The notice of the meeting, whether regular or special, shall state as one of the objects of the meeting to vote on the question whether the corporation shall continue its existence under the provisions of this title; and the notice of

meeting shall be published as required by sectiou 301; and in addition thereto a similar notice shall be mailed to each stockholder at his post-office address. Within thirty days after the holders of a majority of the stock at any such meeting have voted to continue the existence of the corporation under the provisions of this title, the secretary of the corporation shall, under oath, make and subscribe, as such secretary, a certificate in writing stating the calling of such meeting, the fact that the holders of a majority of the stock voted to continue the existence of the corporation under this title, which shall be filed in the office of the county clerk in which its original articles of incorporation have been filed, and shall file in the office of the secretary of state a certified copy thereof according to the provisions of section 296; and the secretary of state shall issue his usual certificate as provided in said section. Thereupon such corporation shall be subject to all the provisions of this title, as though originally incorporated under the provisions hereof, except that no change in its name or amount of capital stock shall be made; but the name shall be the same as contained in the original articles.

Definition of.

SEC. 647. The name "building and loan association," and all reference to the same as "association" or "associations," as used in this title, shall include all corporations, societies, or organizations, investment companies, or associations, or persons, whether organized in this state or represented by agents, doing a savings and loan or investment business, and which are not under the direct supervision of the bank commissioners or the insurance commissioner, and whether issuing certificates of stock which mature at a time fixed in advance or not, and shall also include any association or company which is based on the plan of building and loan associations, and which contains features similar to such associations.

COMMISSIONERS' NOTE: The original of this section was section 20 of the act creating the board of building and loan commissioners (Stats. 1893, 229). Old section 648½ is omitted for the reason that the act therein referred to, from the operation of which the provisions of this title were excepted, was repealed by the act of March 31, 1897 (Stats. 1897, 243).

TITLE XVII.

COLLEGES AND SEMINARIES OF LEARNING.

Section 649. Articles of incorporation.
650. Board of trustees.
651. Existing institutions.

Articles of incorporation.

SEC. 649. Any number of persons who may desire to establish a college or seminary of learning may incorporate themselves as provided in this part, except that in lieu of the requirements of section 290, the articles of incorporation shall contain:

1. The name of the corporation;

2. The purpose for which it is organized;

3. The place where the college or seminary is to be conducted;

4. The number of its trustees, which shall not be less than five nor more than fifteen, and the names and residences of the trustees. The term for which the trustees may and their successors are to hold office may also be stated. If it is desired that the trustees, or any portion of them, shall belong to any organization, society, or church, such limitation shall be stated;

5. The names of those who have subscribed money or property to assist in founding the seminary or college, together with the amount of money and description of property subscribed.

Board of trustees.

SEC. 650. Unless otherwise provided in the articles of incorporation, the board of trustees shall, as soon as organized, so classify themselves that one fifth of their number shall go out of office every year, and thereafter the trustees shall hold office for five years. A majority of the trustees shall constitute a quorum for the transaction of business, and the office of the corporation shall be at the college or seminary. The trustees shall have power:

1. To elect, by ballot, annually one of their number as president of the board;

2. Upon the death, removal out of the state, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place; *provided*, that where there are graduates of the institution, such graduates may, under such rules as the board shall prescribe, nominate persons to fill vacancies in the

board of trustees. Such nominations shall be considered by the board, but it may reject any or all such nominations and of its own motion appoint others;

3. To elect additional trustees; *provided*, the whole number elected shall never exceed fifteen at any one time;

4. To declare vacant the seat of any trustee who shall absent himself from eight succeeding meetings of the board;

5. To receive and hold, by purchase, gift, devise, bequest, or grant, real or personal property, for educational purposes, connected with the corporation, or for the benefit of the institution;

6. To sell, mortgage, lease, and otherwise use and dispose of the property of the corporation in such manner as they shall deem most conducive to the prosperity of the corporation;

7. To direct and prescribe the course of study and discipline to be observed in the college or seminary;

8. To appoint a president of the college or seminary, who shall hold his office during the pleasure of the trustees;

9. To appoint such professors, tutors, and other officers as they shall deem necessary, who shall hold their offices during the pleasure of the trustees;

10. To grant such literary honors as are usually granted by any university, college, or seminary of learning in the United States, and in testimony thereof to give suitable diplomas under their seal, and the signature of such officers of the corporation and the institution as they shall deem expedient;

11. To fix salaries of the president, professors, and other officers and employés of the college or seminary;

12. To make all by-laws and regulations necessary and proper to carry into effect the preceding powers, and necessary to advance the interest of the college or seminary; *provided*, that no by-laws or regulations shall conflict with the constitution or laws of the United States, or of this state.

Existing institutions.

SEC. 651. Any educational corporation or body claiming to be such now existing, may, by a majority vote of its trustees, at special meeting called for that purpose, and of which due notice shall be given to each trustee, convey all its property, rights, and franchises to a corporation organized under this title. The fact that due notice of the meeting was given to each trustee shall be conclusively proven by the entries in the minutes of the corporation or body making the conveyance. Said minutes shall be certified to be correct by the president and secretary.

TITLE XVIII.

CONSOLIDATION OF COLLEGES AND INSTITUTIONS OF HIGHER EDUCATION.

Section 652. Societies and organizations authorized to consolidate.
653. Transfer of property.

Societies and organizations authorized to consolidate.

SEC. 652. Whenever any benevolent, religious, or fraternal organization or society, having a grand lodge, assembly, conference, or other legislative or representative head, in the state of California, having two or more colleges or institutions of higher education under its patronage, shall, for the purpose of greater efficiency and simplicity in the administration of its educational interests, desire to consolidate such institutions under one management, such organization or society shall be and is authorized to consolidate such institutions under one management by complying with the following provisions:

1. Such grand lodge, assembly, conference, or other legislative or representative head, having authorized a consolidation of its institutions, a new corporation shall be formed. The board of trustees of the new corporation shall at first consist of the persons constituting the boards of trustees of the several institutions, respectively, thus consolidated, and others; *provided*, the number of trustees shall not exceed forty-five. The board of trustees shall be so classified that the term of office of one third of its number shall expire each year; the successors of such trustees, as their terms expire, shall be elected by such grand lodge, assembly, conference, or other legislative or representative head, at its annual meeting;

2. The said board of trustees shall report annually to the grand lodge, assembly, conference, or other legislative or representative head controlling it, the condition of affairs of such corporation, and the amount and manner of its receipts and expenditures.

Transfer of property.

SEC. 653. The several boards of trustees of the institutions thus consolidated shall be and are hereby authorized and directed to transfer all property, real and personal, held by them, to the new corporation, as herein constituted, together with all powers, privileges, and authority conferred upon or

enjoyed by them, under their respective charters or acts of incorporation. The new corporation receiving such property shall assume all indebtedness and liabilities of such institutions as are thus consolidated, but shall not transfer such property from one location to another, except by an affirmative vote of not less than three fourths of the said board of trustees of the new corporation, nor divert specific grants, donations, or bequests from the purposes for which such grants, donations, or bequests were made. After the boards of trustees have conveyed the property, real and personal, of the various institutions, to the new corporation, as hereinabove provided, and the same has been accepted by the said new corporation, then the franchises held by the corporations thus consolidating shall cease, and the said corporations shall be thereby dissolved.

DIVISION SECOND.

PART I. PROPERTY IN GENERAL. [654–749.]
II. REAL OR IMMOVABLE PROPERTY. [755–871.]
III. PERSONAL OR MOVABLE PROPERTY. [946–985.]
IV. ACQUISITION OF PROPERTY. [1000–1425.]

PART I.

PROPERTY IN GENERAL.

TITLE I. NATURE OF PROPERTY. [654–663.]
II. OWNERSHIP. [669–742.]
III. GENERAL DEFINITIONS. [748–749.]

TITLE I.

NATURE OF PROPERTY.

Section 654. Property defined.
655. In what property may exist.
656. Wild animals.
657. Real and personal.
658. Real property.
659. Land.
660. Fixtures.
661. Fixtures attached to mines.
662. Appurtenances.
663. Personal property.

Property defined.

SEC. 654. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

In what property may exist.

SEC. 655. There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the good will of

a business, trademarks or signs, and of rights created or granted by statute.

Wild animals.

SEC. 656. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

Real and personal.

SEC. 657. Property is either:

1. Real or immovable; or,
2. Personal or movable.

Real property.

SEC. 658. Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law.

Land.

SEC. 659. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

Fixtures.

SEC. 660. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs, or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

Fixtures attached to mines.

SEC. 661. Sluice-boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

Appurtenances.

SEC. 662. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit; as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another.

Personal property.

SEC. 663. Every kind of property that is not real is personal.

TITLE II.

OWNERSHIP.

CHAPTER I. OWNERS. [669–672.]
II. MODIFICATIONS OF OWNERSHIP. [678–726.]
III. RIGHTS OF OWNERS. [732–733.]
IV. TERMINATION OF OWNERSHIP. [739–742.]

CHAPTER I.

OWNERS.

Section 669. Ownership.
670. Property of the state.
671. Who may own property.
671*a*. Aliens, rights of with respect to property.
672. Aliens inheriting must claim within five years.

Ownership.

SEC. 669. All property has an owner, whether that owner is the state, and the property public, or the owner an individual, and the property private. The state may also hold property, as a private proprietor.

Property of the state.

SEC. 670. The state is the owner of all land below tide-water, and below ordinary high-water mark, bordering upon tide-water within the state; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the state, and all property of which there is no other owner.

Who may own property.

SEC. 671. Any citizen of this state, or of the United States, may take, hold, and dispose of, property, real or personal, within this state.

Aliens, rights of with respect to property.

SEC. 671*a*. Foreigners of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of all property other than real estate as native-born citizens; *provided*, that

such aliens owning real estate at the time of the adoption of this code may remain such owners.

COMMISSIONERS' NOTE: The Commissioners have amended section 671, and added a new section to be known as section 671*a*, so as to make this code conform to and carry out the requirements of the amendment to section 17, Article I, of the constitution, as adopted November 6, 1894, it being their duty under the act creating the commission. It will be observed that said amendment to the constitution also gives the power to regulate the succession and disposition of property inherited by non-resident aliens. But this power seems to be discretionary with the legislature, so the Commissioners merely call attention to such power in that regard.

Aliens inheriting must claim within five years.

SEC. 672. If a non-resident alien takes by succession, he must appear and claim the property within five years from the time of succession, or be barred. The property in such case is disposed of as provided in Title VIII, Part III, Code of Civil Procedure.

CHAPTER II.

MODIFICATIONS OF OWNERHSIP.

ARTICLE I. INTERESTS IN PROPERTY. [678–703.]
II. CONDITIONS OF OWNERSHIP. [707–711.]
III. RESTRAINTS UPON ALIENATION. [715–718.]
IV. ACCUMULATIONS. [722–726.]

ARTICLE I.

INTERESTS IN PROPERTY.

Section 678. Ownership, absolute or qualified.
679. When absolute.
680. When qualified.
681. Several ownership defined.
682. Ownership of several persons.
683. Joint interest defined.
684. Partnership interest defined.
685. Interest in common defined.
686. What interests are in common.
687. Community property defined.
688. Interests as to time.
689. Present interest defined.
690. Future interest defined.
691. Perpetual interest defined.
692. Limited interest defined.
693. Kinds of future interests.
694. Vested interests defined.
695. Contingent interests defined.
696. Two or more future interests.
697. Certain future interests not to be void.
698. Posthumous children.
699. Future interests, pass, how.
700. Mere possibility not deemed an interest.
701. Interests in real property.
702. Same.
703. What future interests are recognized.

Ownership, absolute or qualified.

SEC. 678. The ownership of property is either:

1. Absolute; or,
2. Qualified.

When absolute.

SEC. 679. The ownership of property is absolute when a single person has the absolute dominion over it, and may use or dispose of it according to his pleasure, subject only to general laws.

When qualified.

SEC. 680. The ownership of property is qualified:

1. When it is shared with one or more persons.
2. When the time of enjoyment is deferred or limited.
3. When the use is restricted.

Several ownership defined.

SEC. 681. The ownership of property by a single person is designated as a sole or several ownership.

Ownership of several persons.

SEC. 682. The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests;
3. Of interests in common;
4. Of community interest of husband and wife.

Joint interest defined.

SEC. 683. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

Partnership interest defined.

SEC. 684. A partnership interest is one owned by several persons in partnership, for partnership purposes.

Interest in common defined.

SEC. 685. An interest in common is one owned by several persons, not in joint ownership or partnership.

What interests are in common.

SEC. 686. Every interest created in favor of several persons in their own right is an interest in common, unless acquired by

them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section 683, or unless acquired as community property.

Community property defined.

SEC. 687. Subject to the provisions of section 164, community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

COMMISSIONERS' NOTE: The amendment to section 687 is made to harmonize same with section 164 of this code.

Interests as to time.

SEC. 688. In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

Present interest defined.

SEC. 689. A present interest entitles the owner to the immediate possession of the property.

Future interest defined.

SEC. 690. A future interest entitles the owner to the possession of the property only at a future period.

Perpetual interest defined.

SEC. 691. A perpetual interest has a duration equal to that of the property.

Limited interest defined.

SEC. 692. A limited interest has a duration less than that of the property.

Kinds of future interests.

SEC. 693. A future interest is either:

1. Vested; or,
2. Contingent.

Vested interests defined.

SEC. 694. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

Contingent interests defined.

SEC. 695. A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

Two or more future interests.

SEC. 696. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Certain future interests not to be void.

SEC. 697. A future interest is not to be void merely because of the improbability of the contingency on which it is limited to take effect.

Posthumous children.

SEC. 698. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

Future interests, pass, how.

SEC. 699. Future interests pass by succession, will, and transfer, in the same manner as present interests.

Mere possibility not deemed an interest.

SEC. 700. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

Interests in real property.

SEC. 701. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in Part II of this division.

Same.

SEC. 702. The names and classification of interests in real property have only such application to interests in personal property as in this division of the code is expressly provided.

What future interests are recognized.

SEC. 703. No future interest in property is recognized by the law, except such as is defined in this division of the code.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

Section 707. Fixing the time of enjoyment.
708. Conditions defined.
709. Certain conditions precedent void.
710. Conditions restraining marriage void.
711. Conditions restraining alienation void.

Fixing the time of enjoyment.

SEC. 707. The time when the enjoyment of property is to begin or end may be determined by computation, or be made

to depend on events. In the latter case, the enjoyment is said to be upon condition.

Conditions defined.

SEC. 708. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

Certain conditions precedent void.

SEC. 709. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

Conditions restraining marriage void.

SEC. 710. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

Conditions restraining alienation void.

SEC. 711. Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

Section 715. How long it may be suspended.
716. Future interests void, which suspend power of alienation.
717. Leases of agricultural land for over ten years, void.
718. Leases of city lots for over twenty years, void.

How long it may be suspended.

SEC. 715. The absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 772.

Future interests void, which suspend power of alienation.

SEC. 716. Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

Leases of agricultural land for over ten years, void.

SEC. 717. No lease or grant of land for agricultural purposes for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid.

Leases of city lots for over twenty years, void.

SEC. 718. No lease or grant of any town or city lot for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

ARTICLE IV.

ACCUMULATIONS.

Section 722. Dispositions of income.
723. Accumulations, when void.
724. Accumulation of income, when not void.
725. Other directions, when void in part.
726. Application of income to support, etc., of minor.

Dispositions of income.

SEC. 722. Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests.

Accumulations, when void.

SEC. 723. All directions for the accumulation of the income of property, except such as are allowed by this title, are void.

Accumulation of income, when not void.

SEC. 724. An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

Other directions, when void in part.

SEC. 725. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than

during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

Application of income to support, etc., of minor.

SEC. 726. When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund.

CHAPTER III.

RIGHTS OF OWNERS.

Section 732. Increase of property.
733. In certain cases, who entitled to income of property.

Increase of property.

SEC. 732. The owner of a thing also owns all its increase, products, and accessions, except as provided in section 1926.

COMMISSIONERS' NOTE: The amendment to the above section consists in the reference to section 1926, which see.

In certain cases, who entitled to income of property.

SEC. 733. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

Section 739. Future interest, when defeated.
740. Same.
741. Future interest, when not defeated.
742. Same.

Future interest, when defeated.

SEC. 739. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

Same.

SEC. 740. A future interest may be defeated in any manner or by any act or means which the party creating such interest

provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

Future interest, when not defeated.

SEC. 741. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

Same.

SEC. 742. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner, and to the same extent, as if the precedent interest had continued to the same period.

TITLE III.

GENERAL DEFINITIONS.

Section 748. Income defined.
749. Time of creation defined.

Income defined.

SEC. 748. The income of property, as the term is used in this part of the code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

Time of creation defined

SEC. 749. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest, within the meaning of this part of the code.

PART II.

REAL OR IMMOVABLE PROPERTY.

TITLE I. GENERAL PROVISIONS. [755.]
II. ESTATES IN REAL PROPERTY. [761–811.]
III. RIGHTS AND OBLIGATIONS OF OWNERS. [818–841.]
IV. USES AND TRUSTS. [847–871.]

TITLE I.

GENERAL PROVISIONS.

Section 755. Real property, how governed.

Real property, how governed.

SEC. 755. Real property within this state is governed by the law of this state, except where the title is in the United States.

TITLE II.

ESTATES IN REAL PROPERTY.

CHAPTER I. ESTATES IN GENERAL. [761–781.]
II. TERMINATION OF ESTATES. [789–793.]
III. SERVITUDES. [801–811.]

CHAPTER I.

ESTATES IN GENERAL.

Section 761. Enumeration of estates.
762. What estate a fee simple.
763. Conditional fees and estates tail abolished.
764. Certain remainders valid.
765. Freeholds, chattels real, and chattel interests defined.
766. Estates for life of a third person, when a freehold, etc
767. Future estate defined.
768. Reversion defined.
769. Remainder defined.
770. Limitations of chattels real.
771. Suspension by trust.
772. Contingent remainder in fee.
773. Remainder, future and contingent estates, how created.
774. Limitation of successive estates for life.

Section 775. Remainder upon estates for life or in a term for years.
776. Contingent remainder on a term of years.
777. Remainder of estates for life.
778. Remainder upon a contingency.
779. Heirs of a tenant for life, when to take as purchasers.
780. Construction of certain remainder.
781. Effect of power of appointment.

Enumeration of estates.

SEC. 761. Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance or perpetual estates;
2. Estates for life;
3. Estates for years; or,
4. Estates at will.

What estate a fee simple.

SEC. 762. Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple, or an absolute fee.

Conditional fees and estates tail abolished.

SEC. 763. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple; and if no valid remainder is limited thereon, is a fee simple absolute.

Certain remainders valid.

SEC. 764. Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession on the death of the first taker, without issue living at the time of his death.

Freeholds, chattels real, and chattel interests defined.

SEC. 765. Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

Estates for life of a third person, when a freehold, etc.

SEC. 766. An estate, during the life of a third person, whether limited to heirs or otherwise, is a freehold.

Future estate defined.

SEC. 767. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination,

by lapse of time or otherwise, of a precedent estate created at the same time.

Reversion defined.

SEC. 768. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

Remainder defined.

SEC. 769. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

Limitations of chattels real.

SEC. 770. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

Suspension by trust.

SEC. 771. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of section 715.

Contingent remainder in fee.

SEC. 772. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

Remainder, future and contingent estates, how created.

SEC. 773. Subject to the rules of this title, and of Part I of this division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee upon a contingency, which, if it should occur, must happen within the period prescribed in this title.

Limitation of successive estates for life.

SEC. 774. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

Remainder upon estates for life or in a term for years.

SEC. 775. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term.

Contingent remainder on a term of years.

SEC. 776. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

Remainder of estates for life.

SEC. 777. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Remainder upon a contingency.

SEC. 778. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

Heirs of a tenant for life, when to take as purchasers.

SEC. 779. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

Construction of certain remainder.

SEC. 780. When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

Effect of power of appointment.

SEC. 781. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

CHAPTER II.

TERMINATION OF ESTATES.

Section 789. Tenancy at will may be terminated by notice.
790. Effect of notice.
791. Re-entry, when and how to be made.
792. Summary proceedings in certain cases provided for.
793. Notice not necessary before action.

Tenancy at will may be terminated by notice.

SEC. 789. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant in the manner prescribed by section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than one month to be specified in the notice.

Effect of notice.

SEC. 790. After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

Re-entry, when and how to be made.

SEC. 791. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued upon three days' notice, as provided in sections 1161 and 1162, Code of Civil Procedure.

Summary proceedings in certain cases provided for.

SEC. 792. Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in sections 1159 to 1175, both inclusive, of the Code of Civil Procedure.

Notice not necessary before action.

SEC. 793. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time, after the right to re-enter has accrued, without the notice prescribed in section 791.

CHAPTER III.

SERVITUDES.

Section 801. Servitudes attached to land.
802. Servitudes not attached to land.
803. Dominant and servient tenements defined.
804. Servitude, by whom created.
805. By whom held.
806. Extent of servitudes.
807. Easements, how apportioned.
808. Rights of owner of future estate.
809. Actions by owner and occupant of dominant tenement.
810. Actions by owner of servient tenement.
811. How extinguished.

Servitudes attached to land.

SEC. 801. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right of way;
5. The right of taking water, wood, minerals, and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial.

Servitudes not attached to land.

SEC. 802. The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1. The right to pasture, and of fishing and taking game;
2. The right of a seat in church;
3. The right of burial;
4. The right of taking rents and tolls;
5. The right of way;
6. The right of taking water, wood, minerals, or other things.

Dominant and servient tenements defined.

SEC. 803. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

Servitude, by whom created.

SEC. 804. A servitude can be created only by one who has a vested estate in the servient tenement.

By whom held.

SEC. 805. A servitude thereon cannot be held by the owner of the servient tenement.

Extent of servitudes.

SEC. 806. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

Easements, how apportioned.

SEC. 807. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

Rights of owner of future estate.

SEC. 808. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

Actions by owner and occupant of dominant tenement.

SEC. 809. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

Actions by owner of servient tenement.

SEC. 810. The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

How extinguished.

SEC. 811. A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person;

2. By the destruction of the servient tenement;

3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,

4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I. RIGHTS OF OWNERS. [818–834.]
II. OBLIGATIONS OF OWNERS. [840–841.]

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. INCIDENTS OF OWNERSHIP. [818-827.]
II. BOUNDARIES. [829-834.]

ARTICLE I.

INCIDENTS OF OWNERSHIP.

Section 818. Rights of owner of life estate.
819. Rights of tenant for years or at will.
820. Same
821. Rights of grantees of rights and reversions.
822. Liability of assigns of lessee.
823. Rights of lessees and their assigns, etc.
824. Rent upon lease for life, how recovered.
825. Rent dependent on life.
826. Remedy of reversioners, etc.
827. Terms of lease may be changed by notice.

Rights of owner of life estate.

SEC. 818. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

Rights of tenant for years or at will.

SEC. 819. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the

annual products of the soil, work mines and quarries open at the commencement of his tenancy.

Same.

SEC. 820. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

Rights of grantees of rents and reversions.

SEC. 821. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

Liability of assigns of lessee.

SEC. 822. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assigns of the lessee, for any cause of action accruing while they are such assigns, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises.

Rights of lessees and their assigns, etc.

SEC. 823. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

Rent upon lease for life, how recovered.

SEC. 824. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

Rent dependent on life.

SEC. 825. Rent dependent on the life of a person may be recovered after as well as before his death.

Remedy of reversioners, etc.

SEC. 826. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is

transferred, and he has no interest in the property at the commencement of the action.

Terms of lease may be changed by notice.

SEC. 827. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

ARTICLE II.

BOUNDARIES.

Section 829. Rights of owner.
830. Boundaries by water.
831. Boundaries by ways.
832. Lateral and subjacent support, right of owner to excavate.
833. Trees whose trunks are wholly on land of one.
834. Trees whose trunks are on division line.

Rights of owner.

SEC. 829. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

Boundaries by water.

SEC. 830. Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tide-water, takes to ordinary high-water mark; when it borders upon a navigable lake or stream, where there is no tide, the owner takes to the edge of the lake or stream, at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

Boundaries by ways.

SEC. 831. An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

Lateral and subjacent support, right of owner to excavate.

SEC. 832. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for

purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

Trees whose trunks are wholly on land of one.

SEC. 833. Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

Trees whose trunks are on division line.

SEC. 834. Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

Section 840. Owner of life estate, duties of.
841. Monuments and fences.

Owner of life estate, duties of.

SEC. 840. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

Monuments and fences.

SEC. 841. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them;

2. The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards encloses it, he must refund to the other a just proportion of the value at that time, of any division fence made by the latter.

TITLE IV.

USES AND TRUSTS.

Section 847. What uses and trusts may exist.
852. Trust must be in writing.
853. Transfer to one for money paid to another.
856. Purchasers protected.
857. For what purposes express trusts may be created.
858. Certain devises in trusts to be deemed powers.
859. Profits of land liable to creditors in certain cases.
860. Powers, execution of.

Section 863. Trustees of express trusts to have whole estate.
864. Author of trust may devise, etc.
865. Title of grantee of trust property.
866. Interests remaining in grantor of express trusts.
867. Powers over trust of party interested.
869. Effect of omitting trust in conveyance.
870. Certain sales, etc., by trustees, void.
871. When estate of trustee to cease.

What uses and trusts may exist.

SEC. 847. Uses and trusts in relation to real property are those only which are specified in this title.

SEC. 848. *Omitted.*

SEC. 849. *Omitted.*

SEC. 850. *Omitted.*

SEC. 851. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 221), the four preceding sections were repealed, and for that reason the same have been omitted.

Trust must be in writing.

SEC. 852. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law.

Transfer to one for money paid to another.

SEC. 853. When a transfer of real property is made to one person, and the consideration thereof is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

SEC. 854. *Omitted.*

SEC. 855. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 221), the two preceding sections were repealed, and for that reason the same have been omitted.

Purchasers protected.

SEC. 856. No implied or resulting trust can prejudice the rights of a purchaser or encumbrancer of real property for value and without notice of the trust.

For what purposes express trusts may be created.

SEC. 857. Express trusts may be created for any of the following purposes:

1. To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust;

2. To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;

3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of Title II, of this part; or,

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title.

Certain devises in trusts to be deemed powers.

SEC. 858. Where a power to sell real property is given to a mortgagee or other incumbrancer in an instrument intended o secure the payment of money, the power is to be deemed part of the security, and rests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded.

Profits of land liable to creditors in certain cases.

SEC. 859. Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

Powers, execution of.

SEC. 860. Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

SEC. 861. *Omitted.*

SEC. 862. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 222), the preceding two sections were repealed, and for that reason the same have been omitted.

Trustees of express trusts to have whole estate.

SEC. 863. Except as hereinafter provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Author of trust may devise, etc.

SEC. 864. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

Title of grantee of trust property.

SEC. 865. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons excepting the trustees and those lawfully claiming under them.

Interests remaining in grantor of express trust.

SEC. 866. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors.

Powers over trust of party interested.

SEC. 867. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interests in such trust, during his life or for a term of years, by the instrument creating the trust.

SEC. 868. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 223), the preceding section was repealed, and for that reason the same has been omitted.

Effect of omitting trust in conveyance.

SEC. 869. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in

the same office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration.

Certain sales, etc., by trustees, void.

SEC. 870. Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

When estate of trustee to cease.

SEC. 871. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

PART III.

PERSONAL OR MOVABLE PROPERTY.

TITLE I. PERSONAL PROPERTY IN GENERAL. [946.]
II. PARTICULAR KINDS OF PERSONAL PROPERTY. [956–994.]

TITLE I.

PERSONAL PROPERTY IN GENERAL.

Section 946. By what law governed.

By what law governed.

SEC. 946. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

SEC. 947. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 223), this section was repealed, and for that reason has been omitted.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER I. THINGS IN ACTION. [953–954.]
II. SHIPPING. [960–973.]
III. PRODUCTS OF THE MIND. [980–985.]
IV. OTHER KINDS OF PERSONAL PROPERTY. [991–994.]

CHAPTER I.

THINGS IN ACTION.

Section 953. Thing in action, defined.
954. Transfer of, and survivorship.

Thing in action, defined.

SEC. 953. A thing in action is a right to recover money or other personal property by a judicial proceeding.

Transfer of, and survivorship.

SEC. 954. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal repsesentatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

CHAPTER II.

SHIPPING.

ARTICLE I. GENERAL PROVISIONS. [960–966.]
II. RULES OF NAVIGATION. [970–973.]

ARTICLE I.

GENERAL PROVISIONS.

Section 960. Ship and shipping defined.
961. Ship, what are deemed appurtenances of.
962. Foreign and domestic navigation defined.
963. Foreign and domestic ships defined.
964. Differences of owners, not partners, how determined.
965. Repairs and supplies to ship, when not paid by owner.
966. Ships, registry of, how regulated.

Ship and shipping defined.

SEC. 960. The term ship, or shipping, when used in this code, includes steamboats, sailing vessels, canal boats, barges, and every other structure adapted to be navigated from place to place for the transportation of merchandise or persons.

Ship, what are deemed appurtenances of.

SEC. 961. All things, belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances.

Foreign and domestic navigation defined.

SEC. 962. Ships are engaged either in foreign or domestic navigation, or in the fisheries. Ships are engaged in foreign

navigation when passing to or from a foreign country; and in domestic navigation, when passing from place to place within the United States.

Foreign and domestic ships defined.

SEC. 963. A ship in a port of the state to which it belongs is called a domestic ship; in another port it is called a foreign ship.

Differences of owners, not partners, how determined.

SEC. 964. If a ship belong to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

Repairs and supplies to ship, when not paid by owner.

SEC. 965. If the owner of a ship commits its possession and navigation to another, that other, and not the owner, is responsible for its repairs and supplies.

Ship, registry of, how regulated.

SEC. 966. The registry, enrollment, and license of ships are regulated by acts of congress.

ARTICLE II.

RULES OF NAVIGATION.

Section 970. As to ships meeting each other. Steamers in narrow channels. On different courses, etc.
971. Collision from breach of rules, damages for, when recovered.
972. Damages when deemed occasional by willful default.
973. Collisions, damages by, how apportioned.

As to ships meeting each other. Steamers in narrow channels. On different courses, etc.

SEC. 970. In the case of ships meeting, the following rules must be observed, in addition to those prescribed by that part of the Political Code which relates to navigation:

1. Whenever any ship, whether a steamer or sailing ship, proceeding in one direction, meets another ship, whether a steamer or sailing ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other; and this rule applies to all steamers and all sailing ships, whether on the port or starboard tack, and whether close-hauled or not, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject, also, to a due regard to the dangers of navigation, and, as

regards sailing ships on the starboard tack close-hauled, to the keeping such ships under command;

2. In the case of sailing vessels, those having the wind fair must give way to those on a wind. When both are going by the wind, the vessel on the starboard tack must keep her wind, and the one on the larboard tack bear up strongly, passing each other on the larboard hand. When both vessels have the wind large or abeam, and meet, they must pass each other in the same way on the larboard hand, to effect which two last-mentioned objects the helm must be put to port. Steam vessels must be regarded as vessels navigating with a fair wind, and should give way to sailing vessels on a wind of either tack;

3. A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of the steamer;

4. A steamer when passing another steamer in such channel must always leave the other upon the larboard side;

5. When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other;

6. The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within the sound of the steam-whistle, or by the regulations concerning lights upon steamers, prescribed under authority of the laws of the United States.

COMMISSIONERS' NOTE: The words "act of congress, approved August thirtieth, eighteen hundred and fifty-two, and April twenty-ninth, eighteen hundred and sixty-four," stricken out, and the words "laws of the United States" inserted, so as to make all laws thereof applicable, no matter when enacted.

Collision from breach of rules, damages for, when recovered.

SEC. 971. If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary.

Damage, when deemed occasioned by willful default.

SEC. 972. Damage to person or property arising from the failure of a ship to observe any rule of section 970, must be deemed to have been occasioned by the willful default of the

person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

Collisions, damages by, how apportioned.

SEC. 973. Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained;

2. If neither was in fault, the loss must be borne by him on whom it falls;

3. If both were in fault, the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned;

4. If it cannot be ascertained where the fault lies, the loss must be equally divided.

CHAPTER III.

PRODUCTS OF THE MIND.

Section 980. How far the subject of ownership.
981. Joint authorship, in what proportions owned.
982. May be transferred.
983. Making same public, effect of.
984. When not made public, effect of.
985. Private communications; ownership and publication of.

How far the subject of ownership.

SEC. 980. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product of the representations or expressions thereof made by him remain in his possession.

Joint authorship, in what proportions owned.

SEC. 981. Unless otherwise agreed, a product of the mind, in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions;

2. If it is not single, in proportion to the contribution of each.

May be transferred.

SEC. 982. The owner of any product of the mind, or of any respresentation or expression thereof, may transfer his property in the same.

Making same public, effect of.

SEC. 983. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned.

When not made public, effect of.

SEC. 984. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

Private communications, ownership and publication of.

SEC. 985. Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER IV.

OTHER KINDS OF PERSONAL PROPERTY.

Section 991. Trademarks, what may be appropriated as.
992. Good will of business defined; excludes what.
993. Same; transferable.
994. Instruments affecting title to realty, ownership of.

Trademarks, what may be appropriated as.

SEC. 991. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trademark, any form, symbol, or name, which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

Good will of business defined; excludes what.

SEC. 992. The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

Same; transferable.

SEC. 993. The good will of a business is property, transferable like any other.

Instruments affecting title to realty, ownership of.

SEC. 994. Instruments essential to the title of real property, and which are not kept in a public office as a record, pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

PART IV.

ACQUISITION OF PROPERTY.

TITLE I. MODES IN WHICH PROPERTY MAY BE ACQUIRED. [1000–1001.]
II. OCCUPANCY. [1006–1007.]
III. ACCESSION. [1013–1033.]
IV. TRANSFER. [1039, et seq.]
V. HOMESTEADS. [1237, et seq.]
VI. WILLS. [1270, et seq.]
VII. SUCCESSION. [1383, et seq.]
VIII. WATER RIGHTS. [1410, et seq.]
IX. HYDRAULIC MINING. [1424–1425.]

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

Section 1000. How acquired.
1001. Eminent domain.

How acquired.

SEC. 1000. Property is acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or,
5. Succession.

Eminent domain.

SEC. 1001. Any person may, without further legislative action, acquire private property for any use specified in section 1238 of the Code of Civil Procedure, either by consent of the owner or by proceedings had under the provisions of Title VII, Part III, of the Code of Civil Procedure; and any person seeking to acquire property for any of the uses mentioned in such

title is "an agent of the state," or a "person in charge of such use," within the meaning of those terms as used in such title.

COMMISSIONERS' NOTE: The words "This section shall be in force from and after the fourth day of April, eighteen hundred and seventy-two," are omitted, as no necessity exists for their continuance in the section.

TITLE II.

OCCUPANCY.

Section 1006. For any period, confers title sufficient for what purposes.
1007. When constitutes title by prescription; effect of.

For any period, confers title sufficient for what purposes.

SEC. 1006. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.

When constitutes title by prescription; effect of.

SEC. 1007. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

TITLE III.

ACCESSION.

CHAPTER I. TO REAL PROPERTY. [1013–1019.]
II. TO PERSONAL PROPERTY. [1025–1033.]

CHAPTER I.

ACCESSION TO REAL PROPERTY.

Section 1013. Fixtures, when belong to owners of land.
1014. Land formed from natural causes belongs to whom.
1015. Land carried away may be reclaimed, when.
1016. Title to islands formed in navigable streams.
1017. Same; in unnavigable streams.
1018. Same; formed by division of stream.
1019. What fixtures tenant may remove.

Fixtures, when belong to owner of land.

SEC. 1013. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 1019, belongs

to the owner of the land, unless he chooses to require the former to remove it.

Land formed from natural causes belongs to whom.

SEC. 1014. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

Land carried away may be reclaimed, when.

SEC. 1015. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of the bank, and bears it to the opposite bank, or to another part of the same bank, it belongs to the owner of the part carried away, excepting the occupation thereof for one year by the owner of the land to which it has been united, without being reclaimed by the owner of the part carried away, confers the title thereto upon the owner of the land to which it has been united.

COMMISSIONERS' NOTE: Commissioners of 1895 suggested the amendment to this section, and say of it in their note: "The section, as it now stands, leaves the title of the part carried away uncertain, which question the proposed amendment will settle." The change consists in striking from the present section all that follows the word "bank" where it occurs the third time, and inserting the amendment.

Title to islands formed in navigable streams.

SEC. 1016. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.

Same; in unnavigable streams.

SEC. 1017. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

Same; formed by division of stream.

SEC. 1018. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

What fixtures tenant may remove.

SEC. 1019. A tenant may remove from the demised premises any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premise, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

Section 1025. By uniting things belonging to different owners.
1026. Principal part defined. Parts may be separate, when.
1027. Principal part defined.
1028. By uniting materials and workmanship.
1029. Same; inseparable materials.
1030. Same; materials of different owners.
1031. Sections 1025 to 1030, inclusive, not applicable, when.
1032. Owner may elect between the thing and its value.
1033. Wrongfully employing materials of another, liability for.

By uniting things belonging to different owners.

SEC. 1025. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

Principal part defined. Parts may be separated, when.

SEC. 1026. That part is to be deemed the principal to which the other has been united only for the use, ornament, or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated or returned to him, although some injury should result to the thing to which it has been united.

Principal part defined.

SEC. 1027. If neither part can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

By uniting materials and workmanship.

SEC. 1028. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the

value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

Same; inseparable materials.

SEC. 1029. When one has made use of materials which in part belong to him or in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that it cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

Same; materials of different owners.

SEC. 1030. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

Sections 1025 to 1030, inclusive, not applicable, when.

SEC. 1031. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

Owner may elect between the thing and its value.

SEC. 1032. In all cases where one, whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

Wrongfully employing materials of another, liability for.

SEC. 1033. In addition to the liabilities created by the foregoing provisions of this chapter, one who wrongfully em-

ploys materials belonging to another, is liable to the owner thereof in damages.

COMMISSIONERS' NOTE: The change in this section consists merely in the transposition of clauses.

TITLE IV.

TRANSFER.

CHAPTER I. TRANSFERS IN GENERAL. [1039–1085.]
II. TRANSFER OF REAL PROPERTY. [1091–1115.]
III. TRANSFER OF PERSONAL PROPERTY. [1135–1153.]
IV. RECORDING TRANSFERS OF REAL PROPERTY. [1158–1217.]
V. UNLAWFUL TRANSFERS. [1227–1231.]

CHAPTER I.

TRANSFERS IN GENERAL.

ARTICLE I. DEFINITION OF TRANSFER. [1039–1040.]
II. WHAT MAY BE TRANSFERRED. [1044–1047.]
III. MODE OF TRANSFER. [1052–1059.]
IV. INTERPRETATION OF GRANTS. [1066–1072.]
V. EFFECT OF TRANSFER. [1083–1085.]

ARTICLE I.

DEFINITION OF TRANSFER.

Section 1039. Transfer defined.
1040. Voluntary transfer defined.

Transfer defined.

SEC. 1039. Transfer is an act of the parties, or of the law, by which the title to the property is conveyed from one living person to another.

Voluntary transfer defined.

SEC. 1040. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

Section 1044. What may be transferred.
1045. Possibility cannot be, when.
1046. Right of re-entry can be.
1047. Owner not in possession may transfer.

What may be transferred.

SEC. 1044. Property of any kind may be transferred, except as otherwise provided by this article.

Possibility cannot be, when.

SEC. 1045. A mere possibility, not coupled with an interest, cannot be transferred.

Right of re-entry can be.

SEC. 1046. A right of re-entry, or of re-possession for breach of condition subsequent, can be transferred.

Owner not in possession may transfer.

SEC. 1047. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

ARTICLE III.

MODE OF TRANSFER.

Section 1052. When may be oral.
1053. Transfer in writing, how designated.
1054. Takes effect on delivery.
1055. Presumption as to delivery.
1056. Delivery of, necessarily absolute.
1057. May be deposited with third person for delivery. Escrow defined.
1058. Redelivery, or cancellation of, does not retransfer title.
1059. Constructive delivery of, defined.

When may be oral.

SEC. 1052. A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

Transfer in writing, how designated.

SEC. 1053. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two articles, includes all these instruments, unless it is specially applied to real property.

Takes effect on delivery.

SEC. 1054. A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

Presumption as to delivery.

SEC. 1055. A grant duly executed is presumed to have been delivered at its date.

Delivery of, necessarily absolute.

SEC. 1056. A grant cannot be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

May be deposited with third person for delivery. Escrow defined.

SEC. 1057. A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

Redelivery or cancellation, effect of.

SEC. 1058. Redelivering a grant of real property to the grantor, or cancelling it, does not operate to retransfer the title.

Constructive delivery of, defined.

SEC. 1059. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

SEC. 1060. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 225), this section was repealed, and for that reason has been omitted.

ARTICLE IV.

INTERPRETATION OF GRANTS.

Section 1066. Grants, how interpreted.
1067. Limitations in, how controlled.
1068. Recitals in, when may be resorted to.
1069. Interpretation in favor of grantee, when.
1070. Irreconcilable parts in, former part prevails.
1071. Meaning of "heirs" and "issue" in certain remainders.
1072. Words of inheritance not necessary to transfer fee.

Grants, how interpreted.

SEC. 1066. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this article.

Limitations in, how controlled.

SEC. 1067. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

Recitals in, when may be resorted to.

SEC. 1068. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

Interpretation in favor of grantee, when.

SEC. 1069. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by public officer or body, as such, to a private party is to be interpreted in favor of the grantor.

Irreconcilable parts in, former part prevails.

SEC. 1070. If several parts of a grant are absolutely irreconcilable, the former part prevails.

Meaning of "heirs" and "issue" in certain remainders.

SEC. 1071. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

Words of inheritance not necessary to transfer fee.

SEC. 1072. Words of inheritance or succession are not requisite to transfer a fee in real property.

ARTICLE V.

EFFECT OF TRANSFERS.

Section 1083. What title passes by.
1084. Of incidents.
1085. Grant may inure to benefit of stranger.

What title passes by.

SEC. 1083. A transfer vests in the transferee all the actual title to the thing transferred which the transferer then has, unless a different intention is expressed, or is necessarily implied.

Of incidents.

SEC. 1084. The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

Grant may inure to benefit of stranger.

SEC. 1085. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

ARTICLE I. MODE OF TRANSFER. [1091–1096.]
II. EFFECT OF TRANSFER. [1104–1115.]

ARTICLE I.

MODE OF TRANSFER.

Section 1091. Requisites in, for certain estates.
1092. Form of grant.
1093. Grant by married woman, how acknowledged.
1094. Power of attorney of married women, effect of.
1095. Attorney in fact, instrument by, how executed.
1096. Grants by party who has had name changed, how executed.

Requisites in, for certain estates.

SEC. 1091. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Form of grant.

SEC. 1092. A grant of an estate in real property may be made in substance as follows:

"I, A B, grant to C D all that real property situated in (insert name of county) county, state of California, bounded (or described) as follows: (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, 'The Norris Ranch').

"Witness my hand this (insert day) day of (insert month) (insert year).

"A B."

COMMISSIONERS' NOTE: The figures "18" omitted, and the following ("insert year") substituted, to avoid further amendment after the year 1900.

Grant by married woman, how acknowledged.

SEC. 1093. A grant or conveyance of real property made by a married woman may be made, executed, and acknowledged in the same manner and has the same effect as if she were unmarried.

Power of attorney of married women, effect of.

SEC. 1094. A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or incumbrance of her real or personal estate, which shall have the same effect as

if she were unmarried, and must be acknowledged in the same manner as a grant of real property.

COMMISSIONERS' NOTE: The word "may," where it occurred the second time in this section, omitted, and the word "must" inserted.

Attorney in fact, instrument by, how executed.

SEC. 1095. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principals to it, and his own name as attorney in fact.

Grants by party who has had name changed, how executed.

SEC. 1096. A grant, or conveyance, of real property, or any interest therein, made by a party whose name has, since acquiring title thereto, been changed from any cause, must, in addition to the requirements of section 1092, set forth the name by which such title was acquired by such party.

COMMISSIONERS' NOTE: This is a new section containing the provisions of existing law. See act relating to conveyances of real estate, approved March 11, 1874 (Stats. 1873–74, 345).

ARTICLE II.

EFFECT OF TRANSFER.

Section 1104. What easements pass with property.
1105. When fee simple title is presumed to pass.
1106. Subsequently acquired title passes by operation of law.
1107. Grant, how far conclusive on purchasers.
1108. Conveyances by owner for life or for years.
1109. Grant made on condition subsequent.
1110. Grant on condition precedent.
1111. Grant of rents, reversions, and remainders.
1112. Boundary by highway, what passes.
1113. Implied covenants.
1114. What the term "incumbrances" includes.
1115. Lineal and collateral warranties abolished.

What easements pass with property.

SEC. 1104. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner, and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

When fee simple title is presumed to pass.

SEC. 1105. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

Subsequently acquired title passes by operation of law.

SEC. 1106. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

Grant, how far conclusive on purchasers.

SEC. 1107. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

Conveyances by owner for life or for years.

SEC. 1108. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

Grant made on condition subsequent.

SEC. 1109. Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record.

Grant on condition precedent.

SEC. 1110. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

Grants of rents, reversions, and remainders.

SEC. 1111. Grants of rents, or of reversions, or of remainders, are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, must suffer any damage thereby.

Boundary by highway, what passes.

SEC. 1112. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof unless a different intent appears from the grant.

Implied covenants.

SEC. 1113. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to

be passed, the following covenants and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made or suffered by the grantor or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

What the term "incumbrances" includes.

SEC. 1114. The term "incumbrances" includes taxes, assessments, and all liens upon real property.

Lineal and collateral warranties abolished.

SEC. 1115. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference o the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

CHAPTER III.

TRANSFER OF PERSONAL PROPERTY.

ARTICLE I. MODE OF TRANSFER. [1135–1136.]
II. WHAT OPERATES AS A TRANSFER. [1140–1142.]
III. GIFTS. [1146–1153.]

ARTICLE I.

MODE OF TRANSFER.

Section 1135. When must be in writing.
1136. Transfer by sale.

When must be in writing.

SEC. 1135. An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

Transfer by sale.

SEC. 1136. The mode of transferring other personal property by sale is regulated by the title on that subject, in Division Third of this code.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

Section 1140. Transfer of title under sale.
1141. Transfer of title under executory agreement for sale.
1142. When buyer acquires better title than seller has.

Transfer of title under sale.

SEC. 1140. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

Transfer of title under executory agreement for sale.

SEC. 1141. Title is transferred by an executory agreement for the sale or exchange of personal property only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto in the manner prescribed by the chapter upon offer of performance.

When buyer acquires better title than seller has.

SEC. 1142. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind the transfer made by him.

ARTICLE III.

GIFTS.

Section 1146. Gifts defined.
1147. Gift, how made.
1148. Gift not revocable.
1149. Gift in view of death, defined.
1150. When gift presumed to be in view of death.
1151. Revocation of gift made in view of death.
1152. Effect of will upon gift.
1153. When treated as legacy.

Gifts defined.

SEC. 1146. A gift is a transfer of personal property, made voluntarily, and without consideration.

Gift, how made.

SEC. 1147. A verbal gift is not valid, unless the means of obtaining the possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

Gift not revocable.

SEC. 1148. A gift, other than a gift in view of death, cannot be revoked by the giver.

Gift in view of death, defined.

SEC. 1149. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

When gift presumed to be in view of death.

SEC. 1150. A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

Revocation of gift made in view of death.

SEC. 1151. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time; but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation shall not be affected by the revocation.

Effect of will upon gift.

SEC. 1152. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

When treated as a legacy.

SEC. 1153. A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE I. WHAT MAY BE RECORDED. [1158–1165.]
II. MODE OF RECORDING. [1169–1173.]
III. PROOF AND ACKNOWLEDGMENTS OF INSTRUMENTS. [1180–1207.]
IV. EFFECT OF RECORDING OR THE WANT THEREOF. [1213–1217.]

ARTICLE I.

WHAT MAY BE RECORDED.

Section 1158. What may be recorded.
1159. Judgments may be recorded without acknowledgment.
1160. Letters-patent may be recorded without acknowledgment

Section 1161. What instruments must be acknowledged before being recorded.
1162. Same.
1164. Transfers in trust.
1165. Fees of recorder to be indorsed.

What may be recorded.

SEC. 1158. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

Judgments may be recorded without acknowledgment.

SEC. 1159. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, and notices of location of mining claims, may be recorded without acknowledgment, certificate of acknowledgment, or further proof. The record of all notices of location of mining claims made previous to March ninth, eighteen hundred and ninety-seven, in the proper office, without acknowledgment or certificate of acknowledgment, or other proof, shall have the same force and effect for all purposes as if the same had been duly acknowledged, or proved and certified as required by law. Affidavits showing work or posting of notices upon mining claims may also be recorded in the recorder's office of the county where such mining claims are situated.

COMMISSIONERS' NOTE: This section was amended at the last session of the legislature (Stats. 1897, 97) so as to validate all records of notice of location of mining claims made previous to the enactment of this amendment. To carry out its intent the word "heretofore" has been omitted and the words "previous to March ninth, eighteen hundred and ninety-seven," inserted after the word "made," this being the date when the amendment went into effect.

Letters-patent may be recorded without acknowledgment.

SEC. 1160. Letters-patent from the United States or from the state of California, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters-patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters-patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original, for title or for evidence, until said original letters-patent be recorded.

What instruments must be acknowleded before being recorded.

SEC. 1161. Before an instrument can be recorded, unless it belongs to the class provided for in either section 1159, 1160, 1202, or 1203, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in sections 1198 and 1199, and the acknowledgment or proof certified in the manner prescribed by Article III of this chapter.

Same.

SEC. 1162. An instrument, proved and certified pursuant to sections 1198 and 1199, may be recorded in the proper office, if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

SEC. 1163. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 226), this section was repealed, and for that reason has been omitted.

Transfers in trust.

SEC. 1164. Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the titles on the special relation of debtor and creditor, and the chapter on mortgages, respectively.

Fees of recorder to be indorsed.

SEC. 1165. The recorder must in all cases indorse the amount of his fee for recordation on the instrument recorded.

ARTICLE II.

MODE OF RECORDING.

Section 1169. In what office.
1170. Instrument, when deemed recorded.
1171. Books of record.
1172. Duties of recorder.
1173. Transfer of vessels.

In what office.

SEC. 1169. Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated.

Instrument, when deemed recorded.

SEC. 1170. An instrument is deemed to be recorded when, being duly acknowledged or proved, and certified, it is deposited in the recorder's office with the proper officer for record.

Books of record.

SEC. 1171. Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another.

Duties of recorder.

SEC. 1172. The duties of county recorders, in respect to recording instruments, are prescribed by the Political Code.

Transfer of vessels.

SEC. 1173. The mode of recording transfers of ships registered under the laws of the United States is regulated by acts of congress.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

Section 1180. By whom acknowledgments may be taken in this state.
1181. Same.
1182. By whom taken without the state.
1183. By whom taken without the United States.
1184. Deputy can take acknowledgment.
1185. Requisites for acknowledgment.
1187. Conveyance by married woman.
1188. Officer must indorse certificate.
1189. General form of certificate.
1190. Form of acknowledgment by corporation.
1192. Form of certificate of acknowledgment by attorney in fact.
1193. Officers must affix their signatures.
1194. Certificate of authority of justices in certain cases.
1195. Proof of execution, how made.
1196. Witness must be personally known to officer.
1197. Witness must prove, what.
1198. Handwriting may be proved, when.
1199. Evidence must prove, what.
1200. Certificate of proof.
1201. Officers authorized to do certain things.
1202. When acknowledgment defectively certified, correction how made.
1203. When action may be commenced to obtain judgment of proof of instrument.
1204. Effect of judgment in such action.
1205. Conveyances heretofore made to be governed by then existing laws.
1206. Recording, and as evidence, to be governed by then existing laws.
1207. Certified copies as evidence. Records, what notice deemed from.

By whom acknowledgments may be taken in this state.

SEC. 1180. The proof or acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court or a judge of the superior court.

Same.

SEC. 1181. The proof or acknowledgment of an instrument may be made in this state, within the city, city and county,

county, or township for which the officer was elected or appointed, before either:

1. A clerk of a court of record;
2. A county recorder;
3. A court commissioner;
4. A notary public;
5. A justice of the peace.

COMMISSIONERS' NOTE: The word "township" has been substituted for "district," as no officer of a district is authorized to take acknowledgments, while a justice of the peace of a township is.

By whom taken without the state.

SEC. 1182. The proof or acknowledgment may be made without this state, but within the United States, and within the jurisdiction of the officer, before either :

1. A justice, judge, or clerk of any court of record of the United States ;
2. A justice, judge, or clerk of any court of record of any state ;
3. A commissioner appointed by the governor of this state for that purpose ;
4. A notary public ;
5. Any other officer of the state where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

By whom taken without the United States.

SEC. 1183. The proof or acknowledgment of an instrument may be made without the United States, before either :

1. An ambassador, minister, commissioner, or charge d' affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made ;
2. A consul-general, consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made ;
3. A judge of a court of record of the country where the proof or acknowledgment is made ;
4. Commissioners appointed for such purpose by the governor of the state, pursuant to special statutes ;
5. A notary public.

COMMISSIONERS' NOTE: Since this section was incorporated in the code, the government of the United States, by reason of amendments in the national laws, is represented at foreign courts by ambassadors, hence the Commission has included such officer in subdivision 1. Consul-general has been included in subdivision 2, as no good reason exists why an acknowledgment should not be taken by such officer.

Requisites for acknowledgments.

SEC. 1185. The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

SEC. 1186. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 19, 1891 (Stats. 1891, 137), this section was repealed, and for that reason the same has been omitted.

Conveyance by married woman.

SEC. 1187. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner.

Officer must indorse certificate.

SEC. 1188. An officer taking the acknowledgment of an instrument must indorse thereon, or attach thereto, a certificate substantially in the forms hereinafter prescribed.

General form of certificate.

SEC. 1189. The certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form:

"State of ———, }
County of ———. } ss.

"On this ——— day of ———, in the year ———, before me (here insert name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same."

Provided, however, that any acknowledgment taken without this state in accordance with the laws of the place where the acknowledgment is made, shall be sufficient in this state; *and provided further*, that the certificate of the clerk of a court of record of the county or district where such acknowledgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be prima facie evidence of the facts stated in the certificate of said clerk.

Form of acknowledgment by corporation.

SEC. 1190. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

"State of ———, } ss.
County of ———. }

"On this ——— day of ———, in the year ———, before me, (here insert the name and quality of the officer) personally appeared ———, known to me (or proved to me on the oath of ———) to be the president (or the secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same."

SEC. 1191. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 19, 1891 (Stats. 1891, 137), this section was repealed, and for that reason has been omitted.

Form of certificate of acknowledgment by attorney in fact.

SEC. 1192. The certificate of acknowledgment by an attorney in fact, must be substantially in the following form:

"State of ———, } ss.
County of ———. }

"On this ——— day of ———, in the year ———, before me (here insert name and quality of the officer) personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact."

Officers must affix their signatures.

SEC. 1193. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Certificate of authority of justices in certain cases.

SEC. 1194. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any country other than that in which he resides, must be accompanied by a certificate, under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized

to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

Proof of execution, how made.

SEC. 1195. Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them;
2. By a subscribing witness;
3. By other witnesses, in cases mentioned in section 1198.

Witness must be personally known to officer.

SEC. 1196. If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

Witness must prove what.

SEC. 1197. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party, is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

Handwriting may be proved, when.

SEC. 1198. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all subscribing witnesses are dead;
2. When the parties and all subscribing witnesses are non-residents of the state;
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence;
4. When a subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence, in attempting to serve the subpœna or attachment;
5. In case of the continued failure or refusal of the witness to testify, for the space of one hour after his appearance.

Evidence must prove, what.

SEC. 1199. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness.

Certificate of proof.

SEC. 1200. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence, respectively, and the substance of their testimony.

Officers authorized to do certain things.

SEC. 1201. Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations, as prescribed in section 2093, Code of Civil Procedure;

2. To employ and swear interpreters;

3. To issue subpœnas, as prescribed in section 1986, Code of Civil Procedure;

4. To punish for contempt, as prescribed in sections 1991, 1993, 1994, Code of Civil Procedure.

When acknowledgment defective, certified correction, how made.

SEC. 1202. When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the superior court to obtain a judgment correcting the certificate.

COMMISSIONERS' NOTE: The word "district" has been changed to "superior," in order that the section shall conform to the provisions of the constitution.

When action may be commenced to obtain judgment of proof of instrument.

SEC. 1203. Any person interested under an instrument entitled to be proved for record, may institute an action in the superior court against the proper parties to obtain a judgment proving such instrument.

COMMISSIONERS' NOTE: See note to preceding section.

Effect of judgment in such action.

SEC. 1204. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to be recorded with like effect as if acknowledged.

Conveyance heretofore made to be governed by then existing laws.

SEC. 1205. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before twelve o'clock, noon, January first, eighteen hundred and seventy-three, executed, acknowledged, proved, or recorded, is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

COMMISSIONERS' NOTE: The words "this code goes into effect" have been omitted and the following substituted: "twelve o'clock, noon, January first, eighteen hundred and seventy-three."

Recording, and as evidence, to be governed by then existing laws.

SEC. 1206. All conveyances of real property made before twelve o'clock, noon, January first, eighteen hundred and seventy-three, and acknowledged and proved, according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded, in the same manner and with like effect, as conveyances executed and acknowledged in pursuance of this chapter.

COMMISSIONERS' NOTE: See note to preceding section.

Certified copies as evidence. Records, what notice deemed from.

SEC. 1207. Any instrument affecting real property, which was, previous to the first day of January, eighteen hundred and ninety-seven, copied into the proper book of record, kept in the office of any county recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or incumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded; *provided*, it be first shown that the original instrument was genuine.

ARTICLE IV.

EFFECT OF RECORDING, OR THE WANT THEREOF.

Section 1213. Record, where and to whom notice.
1214. Conveyances void, when.
1215. Conveyance defined.
1216. Powers of attorney, how revoked.
1217. Unrecorded instrument valid between the parties.

Record, where and to whom notice.

SEC. 1213. Every conveyance of real property, acknowledged or proved, and certified and recorded, as prescribed by

law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance.

Conveyances void, when.

SEC. 1214. Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action.

Conveyance defined.

SEC. 1215. The term "conveyance," as used in sections 1213 and 1214, embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged, or incumbered, or by which the title to any real property may be affected, except wills.

Power of attorney, how revoked.

SEC. 1216. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of a party by whom it is executed, unless the instrument containing such revocation is also acknowledged, or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

Unrecorded instrument valid between the parties.

SEC. 1217. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

CHAPTER V.

UNLAWFUL TRANSFERS.

Section 1227. Certain instruments void against purchasers.
1228. Not void against purchaser having notice, unless fraud is mutual.
1229. Power to revoke, when deemed executed.
1230. Same.
1231. Other provisions.

Certain instruments void against purchasers.

SEC. 1227. Every instrument, other than a will, affecting an estate in real property, including every charge upon real

property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereupon, is void as against every purchaser or incumbrancer, for value, of the same property, or of the rents or property thereof.

Not void against purchaser having notice, unless fraud is mutual.

SEC. 1228. No instrument is to be avoided under the last section in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

Power to revoke, when deemed executed.

SEC. 1229. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument to the extent of the power, in favor of such purchaser or incumbrancer.

Same.

SEC. 1230. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

Other provisions.

SEC. 1231. Other provisions concerning unlawful transfers are contained in Part II, Division IV, of this code, concerning the special relations of debtor and creditor.

TITLE V.

HOMESTEADS.

CHAPTER I. GENERAL PROVISIONS. [1237–1261.]
II. HOMESTEAD OF THE HEAD OF A FAMILY. [1262–1265.]
III. HOMESTEAD OF OTHER PERSONS. [1266–1269.]

CHAPTER I.

GENERAL PROVISIONS.

Section 1237. Homestead, of what it consists.
1237*a*. Provisions of this title apply to all homesteads.
1237*b*. Provisions of this title shall not prevent partition.
1237*c*. In case of partition or sale, interest of homestead claimant protected.
1238. From what it may be carved.
1239. From what not.
1240. Exempt from forced sale.
1241. Subject to execution and forced sale, when.
1242. How conveyed or incumbered.
1242*a*. Wife estopped from questioning consideration for her interest in homestead.
1242*b*. When husband or wife hopelessly insane.
1242*c*. Notice of application.
1242*d*. Petition.
1242*e*. Order and effect.
1243. How abandoned.
1244. Abandonment, when effectual.
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1247. Petition, where filed. No demurrer or answer thereto.
1248. Notice.
1249. Hearing and appointment of appraisers.
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1253. Division of property, when.
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1255. Bids.
1256. Application of proceeds of sale.
1257. Proceeds protected six months.
1258. Compensation of appraisers.
1259. Costs.
1259*a*. Insurance money on homestead protected.
1260. Who may select homestead, value of.
1261. Head of family defined.

Homestead, of what it consists.

SEC. 1237. The homestead consists of the interest of the claimant, divided or undivided, in the dwelling-house in which the claimant resides, and in the land on which the same is situated, selected as in this title provided.

COMMISSIONERS' NOTE: Prior to the adoption of the act of March 9, 1868 (Stats. 1867-68, 116), a homestead could not be created upon an undivided interest in land. (See *Wolf* vs. *Fleischecker*, 5 Cal. 244, and numerous later cases, including *Rosenthal and Wife* vs. *Merced Bank*, 110 Cal. 198.) The statute of 1868 provided that a homestead could be carved out of land held in joint tenancy, or tenancy in common, where the same was in the exclusive possession of the claimant. The evident intention of the legislature was to afford the same security to the owner of an undivided interest in land, to the extent of his interest therein, as that enjoyed by one who held the entire

title to the land. In the case of *Higgins* vs. *Higgins*, 46 Cal. 259, the right of a wife to claim a homestead in the undivided interest of her husband, to the extent of such interest, was upheld; and other decisions of the court have cited the statute, and in several instances have held that a homestead which failed because the claimant was not in the exclusive possession of the premises, would have been sustained had the claimant enjoyed such possession. It was evidently the opinion of the Code Commissioners of 1870 that a homestead could be created upon an undivided interest, as they say in their note to section 1238: "The estate in the land out of which the homestead is carved may be the fee, or such an interest as mere naked possession gives, or any intermediate estate. The possession may be held by the claimant alone, or in common, or in joint tenancy, for possession of any character is sufficient. It is the 'home' which is intended to be protected to the extent of the rights which the claimant or her husband has in it." The present Commissioners can see no possible reason why this power should not be exercised by the owner of an undivided interest who resides upon the land, nor why he should be required to be in the exclusive possession of such premises in order to exercise his right. The amendment to the above section is therefore suggested to remove any possible doubt which might exist in the premises as to the right of an owner of an undivided interest in land to protect the same to the extent of his interest therein by the creation of a homestead thereon.

Provisions of this title apply to all homesteads.

SEC. 1237*a*. The provisions of this title shall apply to all homesteads heretofore recorded under the laws of this state, as well as to those that may be hereafter acquired.

Provisions of this title shall not prevent partition.

SEC. 1237*b*. Nothing in this title contained shall be so construed as to prevent the joint tenant, or tenant in common, or owner of any other individual interest, from effecting partition, or in case a partition cannot be had, the sale of any real estate so owned in joint, common, or other tenancy, according to the laws of this state, as in other cases provided.

COMMISSIONERS' NOTE: The two preceding sections are drawn from sections two and three of the act of 1868 (p. 16), heretofore referred to.

In case of partition or sale, interest of homestead claimant protected.

SEC. 1237*c*. In case of the partition of the land so held in undivided interests, the portion allotted to the claimant of a homestead upon an undivided interest shall be protected as a homestead in favor of such claimant, to the extent of the value of a legal homestead; and in case of the sale of the land so held in common, the proceeds of the undivided interest of the homestead claimant shall be exempt from execution to the extent of the character of the homestead so declared.

COMMISSIONERS' NOTE: The above section is new, and is inserted to avoid all question as to the right of a homestead claimant to exemption to the value of a homestead in case of partition or sale of the land held in common or joint tenancy.

From what it may be carved.

SEC. 1238. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section 1261, the homestead may be selected from his or her property.

From what not.

SEC. 1239. The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, or joining in making, the declaration of homestead.

Exempt from forced sale.

SEC. 1240. The homestead is exempt from execution or forced sale, except as in this title provided.

Subject to execution and forced sale, when.

SEC. 1241. The homestead is subject to execution and forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises;

2. On debts secured by mechanics, contractors, sub-contractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises;

3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife, or by an unmarried claimant;

4. On debts secured by mortgages on the premises. executed and recorded before the declaration of homestead was filed for record.

How conveyed or incumbered.

SEC. 1242. The homestead of a married person cannot be conveyed or incumbered, except as in this title otherwise provided, unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

COMMISSIONERS' NOTE: There is added to the above section the words "except as in this title otherwise provided," the same being rendered necessary by incorporation in this chapter of the statute providing a method for conveying or incumbering the homestead in case of the hopeless insanity of either spouse.

Wife estopped from questioning consideration for her interest in homestead.

SEC. 1242*a*. When both spouses duly execute a conveyance of, or mortgage upon, a homestead, the wife is thereafter

estopped from questioning the validity of such instrument, on the ground of want of consideration moving to her for her interest in the homestead property so conveyed or incumbered.

COMMISSIONERS' NOTE: It has been held in this state that the creation of a homestead "changes the estate of the parties into a joint tenancy." (See *Cohen* vs. *Davis*, 20 Cal. 195; *Barber* vs. *Babel*, 36 Cal. 11; see, also, *Burkett* vs. *Burkett*, 78 Cal. 312; *Gleason* vs *Spray*, 81 Cal. 219; *Security Loan etc., Co.* vs. *Kauffman*, 108 Cal. 220; and *Prey* vs. *Stanley*, 110 Cal. 423.) In the case of the *California Fruit Transportation Co.* vs. *Anderson et. al.*, decided by Justice Morrow of the circuit court of the northern district of California, on March 15, 1897, it was held that "Under the California laws the wife has an interest in the homestead which requires a consideration for her agreement to convey or incumber it, and therefore her mortgage of the homestead to secure an antecedent debt of the husband is not binding on her." This decision works a hardship upon the owners of a homestead desiring to procure money upon the security of the homestead, rendering it necessary that they should abandon such homestead before the execution of the mortgage thereon, in order to avoid the question of want of consideration to the wife. The above section, which is new, is therefore suggested to overcome the difficulties which exist under the present condition of the law.

When husband or wife hopelessly insane.

SEC. 1242*b*. If either the husband or wife be hopelessly insane, upon application of the husband or wife, not insane, to the superior court of the county in which said homestead is situated, and upon due proof of such insanity, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead, or any part thereof.

Notice of application.

SEC. 1242*c*. Notice of the application of such order shall be given, by publication of the same, in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice shall also be served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there be no such male relative known to the applicant, a copy of such notice shall be served upon the district attorney of the county in which such homestead is situated; and it is hereby made the duty of such district attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

Petition.

SEC. 1242*d*. Thirty days before the hearing of such application, the applicant shall present and file in the court in

which such application is to be heard, a petition for the order mentioned in section 1242*a*, subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the name, age, sex, and residence of the children of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition.

Order and effect.

SEC. 1242*e*. If the court shall make the order provided for in section 1242*b*, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance, or mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage, in fee simple.

COMMISSIONERS' NOTE: The four preceding sections were originally sections 1 to 4, inclusive, of "An act to enable certain parties therein named to alienate or incumber homesteads," approved March 25, 1874, (Stats. 1873–74, 582), and notwithstanding the fact that they prescribe a method of procedure, and might, therefore, with propriety be inserted in the Code of Civil Procedure. They are incorporated herein, chiefly because the remainder of the title includes proceedings in case of an appraisement of the homestead, where an execution has been levied thereon, and it was deemed best to embody the entire subject in one title.

How abandoned.

SEC. 1243. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof executed and acknowledged, or by a subsequent declaration of homestead, duly executed and acknowledged:

1. By the husband and wife, if the claimant is married;
2. By the claimant, if unmarried.

The execution of a deed of trust is not an abandonment of the homestead.

COMMISSIONERS' NOTE: The amendment providing that the execution of a deed of trust is not an abandonment is suggested in order to remove all doubt as to the effect of giving such an instrument. In the case of *King* vs. *Gotz*, 70 Cal., 236, the court held that after the execution of a deed of trust to secure an indebtedness, the debtor has such an interest in the property as entitles him to make a valid claim of homestead thereon. There has also been added to the above section a provision that a subsequent declaration of homestead works an abandonment of a former homestead. This is deemed desirable for the reason that the theory of the homestead law is based upon the necessity of preserving the actual home for the family of the declarant.

If property upon which a declaration of homestead has been filed is no longer the actual place of residence of the family, there can be no sufficient reason for its retaining the character of a statutory homestead.

Abandonment, when effectual.

SEC. 1244. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

Proceedings on execution against.

SEC. 1245. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 1241 is levied upon the homestead, the judgment creditor may apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof.

Verified petition.

SEC. 1246. The application must be made upon a verified petition, showing;

1. The fact that an execution has been levied upon the homestead;

2. The name of the claimant; and, if he be married, the name of the spouse, if known;

3. That the value of the homestead exceeds the amount of the homestead exemption, and exceeded such amount when said homestead was declared.

COMMISSIONERS' NOTE: The Commissioners of 1895 suggested the amendment as to the excess of value, and commented thereon as follows: "This amendment will prevent the sale of, or interference with, the homestead, by a creditor, unless it exceeds the value of the homestead exemption when the execution is issued, and also exceeds such value when the declaration of homestead was made. The amendment and those proposed to be made *infra* will make the provisions of this code on the subject of homestead exemption conform to section 1476 of the Code of Civil Procedure, which provides that no inference in probate shall be made with the homestead, if the value thereof did not exceed the homestead exemption when the declaration was filed. The rule, as laid down in section 1476 of the Code of Civil Procedure, is deemed preferable to that now existing in the Civil Code in this regard, because it is believed that the policy of the law should encourage the improvement and beautifying of homes, by including any increase in value thereto in the homestead exemption, provided the premises do not exceed in value the homestead exemption at the time of the homestead declaration."

Petition, where filed. No demurrer or answer thereto.

SEC. 1247. The petition must be filed with the clerk of the superior court, and an order be made by the judge of said court fixing a time and place for the hearing thereof, and the

homestead claimant is not entitled to demur to or answer said petition.

COMMISSIONERS' NOTE: It was held in the case of *Stone* vs. *McCann*, 79 Cal. 460, that "the court should not allow an answer to the petition to be filed." This section was originally silent upon this point, and it is now amended in accordance with the decision above referred to.

Notice.

SEC. 1248. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, and, if the claimant be married, also upon the spouse, at least ten days before the hearing.

COMMISSIONERS' NOTE: The amendment to this section consists in requiring notice to be given to the spouse, if the claimant be married, and in lengthening the time before the hearing.

Hearing and appointment of appraisers.

SEC. 1249. At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

Oath of appraisers.

SEC. 1250. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

View of premises.

SEC. 1251. They must view the premises, and ascertain and appraise the present value thereof, and also ascertain and appraise the value thereof at the time the same was selected as a homestead, and if its present value exceeds the homestead exemption, and its value exceeded such exemption at the time it was selected, they must determine whether the land claimed can be divided without material injury.

COMMISSIONERS' NOTE: The amendment to this section was suggested by the Commissioners of 1895, and was adopted by the present Commissioners, and conforms to that prepared to section 1246.

Report of appraisers.

SEC. 1252. Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

Division of property, when.

SEC. 1253. If, from the report, it appears to the judge that the present value of the homestead exceeds, and at the time the

same was selected exceeded, the homestead exemption, and that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption. The appraisers must, within ten days after the making of such order, make to the judge, in writing, a report, which report must show what action they have taken thereunder. Upon the application of the petitioner, upon at least three days' notice to the homestead claimant, the judge shall consider such report and make an order confirming or rejecting the same. If the report is confirmed, the execution may be enforced against the remainder of the land.

COMMISSIONERS' NOTE: See note to preceding section.

Sale, when.

SEC. 1254. If, from the report mentioned in section 1252, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption, and exceeded such amount when the homestead was declared, and that it cannot be divided, he must make an order directing its sale under the execution.

COMMISSIONERS' NOTE: See note to section 1251.

Bids.

SEC. 1255. At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

Application of proceeds of sale.

SEC. 1256. If the sale is made, the proceeds thereof to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

Proceeds protected six months.

SEC. 1257. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband which the law gives to the homestead.

Compensation of appraisers.

SEC. 1258. The court must fix the compensation of the appraisers, not to exceed five dollars per day each for the time actually engaged.

Costs.

SEC. 1259. The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in sections 1253 and 1254, the amount so paid must be added as costs on execution, and collected accordingly.

Insurance money on homestead protected.

SEC. 1259*a*. Money paid upon a loss under a policy of fire insurance upon any portion of the homestead is entitled, for a period of six months after such payment, to the same protection against legal process and the voluntary disposition of the husband which the law gives to the homestead; and any building constructed or repaired with the proceeds of such fire insurance shall constitute a part of the homestead in the same manner as if the same had been upon the land when the declaration of homestead was filed.

COMMISSIONERS' NOTE: The foregoing section was recommended by the commissioners of 1895, on page 92 of their report, as section 1259. It is adopted by this commission and renumbered as 1259*a*, upon the authority of the supreme court in the case of *Houghton* vs. *Lee*, 50 Cal. 101.

Who may select homestead, value of.

SEC. 1260. Homesteads may be selected and claimed:

1. Of not exceeding five thousand dollars in value by any head of a family, or by the spouses jointly; or by the wife, if the husband has not made such selection and claim;

2. Of not exceeding one thousand dollars in value by any other person.

COMMISSIONERS' NOTE: This amendment confers the power to select and claim a $5,000 homestead on the spouses jointly, and also upon the wife, if the husband has not made such selection and claim.

Head of family defined.

SEC. 1261. The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person;

2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either: (1) his or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband; (2) a minor brother or sister, or the minor child of a deceased brother or sister;

3. A father, mother, grandfather or grandmother;

4. The father, mother, grandfather, or grandmother, of a deceased husband or wife;

5. An unmarried sister, or any other of the relatives men-

tioned in this section, who have attained the age of majority, and are unable to take care of or support themselves.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

Section 1262. Selection, how and by whom made.
1263. Declaration, what to contain.
1264. Declaration must be recorded.
1265. Tenure by which homestead is held.

Selection, how and by whom made.

SEC. 1262. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

Declaration, what to contain.

SEC. 1263. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family, and, if the claimant be married, the name of the spouse; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead.

3. A description of the premises, together with a statement of the nature and extent of the interest of the claimant therein;

4. An estimate of their actual cash value.

COMMISSIONERS' NOTE: This amendment is suggested because it can be more readily ascertained if other declarations have been made; it will also facilitate investigation of the record when desired. Amendment of this section was also necessary to harmonize it with section 1237. See note thereto.

Declaration must be recorded.

SEC. 1264. The declaration must be recorded in the office of the recorder of the county in which the land is situated. If the land is situated in more than one county, said declaration, or a duplicate thereof, duly acknowledged, must be recorded in each of said counties.

COMMISSIONERS' NOTE: The provision with reference to the recording of a duplicate of the declaration is added in accordance with the decision of the supreme court in the case of *Kennedy* vs. *Gloster*, 98 Cal. 143.

Tenure by which homestead is held.

SEC. 1265. From and after the time the declaration is filed for record, the premises therein described constitute a home-

stead, to the extent of the interest of the claimant therein. If the selection was made by a married person from the community property, or from the separate property of the person selecting or joining in the selection of the same, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title.

COMMISSIONERS' NOTE: The change in this section is rendered necessary by amendments to section 1237. See note thereto. Also, to harmonize it with sections 1468 and 1474, of the Code of Civil Procedure. Previous to the suggested amendment it seemed to conflict therewith, although the supreme court has held otherwise in the following cases: *In re Coglan*, 92 Cal. 870; and *Dickey* vs. *Gibson*, 113 Cal. 31.

CHAPTER III.

HOMESTEAD OF OTHER PERSONS.

Section 1266. Mode of selection.
1267. Declaration, what to contain.
1268. Declaration must be recorded.
1269. Effect of filing same.

Mode of selection.

SEC. 1266. Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a "declaration of homestead."

Declaration, what to contain.

SEC. 1267. The declaration must contain everything required by the second, third, and fourth subdivisions of section 1263.

Declaration must be recorded.

SEC. 1268. The declaration must be recorded, as provided in section 1264.

Effect of filing same.

SEC. 1269. From and after the time the declaration is filed for record, the land described therein is a homestead, to the extent of the interest of the claimant therein.

COMMISSIONERS' NOTE: The amendment to the above section is rendered necessary by amendments to section 1237. See note thereto.

TITLE VI.

WILLS.

CHAPTER I. EXECUTION AND REVOCATION OF WILLS. [1270–1315.]
II. INTERPRETATION OF WILLS. [1317–1351.]
III. GENERAL PROVISIONS RELATING TO WILLS. [1357–1377.]

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

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Who may make a will.

SEC. 1270. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in Title VII. of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

SEC. 1271. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Stats. 1873–74, 232), the above section was repealed, and for that reason the same has been here omitted.

Will, or revocation thereof, procured by fraud, and effect of.

SEC. 1272. A will, or a part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation procured by the same means may be declared void.

Married woman may dispose of separate estate by will.

SEC. 1273. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

What may pass by will.

SEC. 1274. Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections 1401 and 1402.

Who may take by will.

SEC. 1275. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, can not take under a will, unless expressly authorized by statute.

Written will, how to be executed.

SEC. 1276. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

Definition of an olographic will.

SEC. 1277. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed.

Witness to add residence.

SEC. 1278. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Mutual will.

SEC. 1279. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

Competency of subscribing witness.

SEC. 1280. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

Conditional will.

SEC. 1281. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

Gifts to a subscribing witness void. Creditors competent witnesses.

SEC. 1282. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

Witness who is a devisee, rights of.

SEC. 1283. If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same from the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Will made out of this state.

SEC. 1284. A will of real or personal property, or both, or a revocation thereof, made out of this state by a person not having his domicile in this state, is as valid, when executed according to the laws of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this state, and according to the provisions of this chapter.

Will not duly executed, void.

SEC. 1285. No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

Subsequent change of domicile.

SEC. 1286. Whenever a will, or a revocation thereof, is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place by the law of which such will would be void.

COMMISSIONERS' NOTE: The three preceding sections are here inserted as they appear in the original annotated Civil Code. The commissioners deem such action advisable for the reason that sections 1322, 1323 and 1324 of the Code of Civil Procedure are similar in principle to the sections the restoration of which is hereby recommended, and for the further

reasons contained in the following note of the Commissioners of 1870: "The three preceding sections change the rule of our statutes (as existing prior to the adoption of the codes) requiring all wills to be executed according to our laws, and admitted to probate as our laws require. These sections seem to be more liberal and just, and were therefore adopted. Section 1324 of the Code of Civil Procedure is made to conform to these sections. *Norris* vs. *Harris*, 15 Cal. 15; see, also, *Moultrie* vs. *Hunt*, 23 N. Y. 394; *Parsons* vs. *Lyman*, 20 N. Y. 103."

Republication by codicil.

SEC. 1287. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

Nuncupative will, how to be executed.

SEC. 1288. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

Requisites of valid nuncupative will.

SEC. 1289. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars;

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect;

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day.

Proof of nuncupative wills.

SEC. 1290. No proof must be received of any nuncupative will unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Probate of nuncupative wills.

SEC. 1291. No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed o writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.

Written will, how revoked.

SEC. 1292. Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator;

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Evidence of revocation.

SEC. 1293. When a will is canceled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction must be proved by two witnessess.

SEC. 1294. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 233), the above section was repealed, and for that reason the same has been here omitted.

Revocation of duplicate.

SEC. 1295. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

Revocation by subsequent will.

SEC. 1296. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Antecedent will not revived by revocation of subsequent will.

SEC. 1297. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will is duly republished.

Revocation by marriage and birth of issue.

SEC. 1298. If, after making a will, the testator marries, and has issue of such marriage, born either in his lifetime or after

his death, and the wife or issue survives him, the will is revoked unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Effect of marriage of a man on his will.

SEC. 1299. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

COMMISSIONERS' NOTE: See *Corker* vs. *Corker*, 87 Cal. 643, for an accurate definition of the term "marriage contract," as used in this section.

Effect of marriage of a woman on her will.

SEC. 1300. A will, executed by an unmarried woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

Contract of sale not a revocation.

SEC. 1301. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Mortgage not a revocation.

SEC. 1302. A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

Conveyance when not a revocation.

SEC. 1303. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his last will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

Instrument changing testator's interest, when it is a revocation.

SEC. 1304. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

Revocation of codicils.

SEC. 1305. The revocation of a will revokes all its codicils.

Afterborn child, unprovided for, to succeed.

SEC. 1306. Whenever a testator has a child born after the making of a will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

COMMISSIONERS' NOTE: See note to next section.

Children of issue of children unprovided for, to succeed.

SEC. 1307. When any testator omits to provide in his will for any of his children, including illegitimate children upon whom has been conferred by law the capacity of inheritance, or for the issue of any child, deceased at the time of making such will, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

COMMISSIONERS' NOTE: The words "including illegitimate children upon whom has been conferred by law the capacity of inheritance" have been added to this section in accordance with the decision in *Estate of Wardell*, 57 Cal. 484, where it was held that the well-settled common-law definition of the word "children", viz., "those born in lawful wedlock," has been greatly enlarged by the statute law, and that "the term 'children,' as used in this section, * * * * must relate to *status* not to origin"; that "the word has therefore a statutory and not a common-law meaning, and its meaning includes all children *upon whom has been conferred by law the capacity of inheritance.*" The words "deceased at the time of making such will" are inserted to conform the section with the construction placed upon it in *Estate of Barter*, 86 Cal. 441.

Share of afterborn child, out of what part of estate to be paid.

SEC. 1308. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as herein-

before mentioned, the same must be first taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Advancement during lifetime of testator.

SEC. 1309. If such children, or their descendants, so unprovided for, has an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants.

SEC. 1310. When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

Devises of land, how construed.

SEC. 1311. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Will passes after-acquired estates.

SEC. 1312. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise, all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

Restrictions to devise for charitable uses.

SEC. 1313. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society, or corporation, or to any person or persons in trust for charitable uses, except

the same be done by will, duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid; *provided*, that no such devises or bequests shall collectively exceed one third of the distributable assets of the testator leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one third of such estate; and all dispositions of property made contrary thereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

COMMISSIONERS' NOTE: The meaning of the phrase "one third of the estate" was fully considered by the supreme court in *Estate of Hinckley*, 58 Cal. 457, and it was there determined that it was the intention of the legislature to limit a devise or bequest for charitable purposes to one third of the "distributable assets" of the testator, that is, "of the property which shall remain after payment of his debts and charges of administration." The section having been so construed, the words "distributable assets" have been substituted for the word "estate," in accordance therewith.

Municipal boards may accept gifts, bequests, etc.

SEC. 1314. The board of common council, supervisors, trustees, houses of legislation, or other legislative bodies of the several counties, cities and counties, cities, and towns of this state, are hereby authorized to accept or reject, as they may deem advisable, any gift, bequest, or devise heretofore or that may be hereafter made to or in favor of the counties, cities and counties, cities, or towns represented by them respectively, or to or in favor of any of the officers or boards of officers thereof, in their official capacity, or to or in their favor in trust for any lawful public purpose.

COMMISSIONERS' NOTE: See note to next section.

How such gifts or bequests held or disposed of.

SEC. 1315. The several counties, cities and counties, cities, and towns of this state, and the several officers and boards of officers thereof, in their official capacity, are hereby authorized to receive property by gift, bequest, and devise, and to hold and dispose of the same, and the income and increase thereof, to and for such lawful uses and purposes as have been or may hereafter be prescribed in the terms of such gift, bequest, or devise. In the event of any such gift, bequest, or devise having been, or being hereafter made, unaccompanied by any provision prescribing or limiting the uses or purposes to which the property received thereunder, or the income or increase thereof, shall be put, such uses and purposes may be prescribed

and regulated by the common council, board of supervisors, board of trustees, houses of legislation, or other legislative body of the proper county, city and county, city, or town. Such legislative bodies may make such regulations concerning the mode and manner of carrying into effect the purposes as aforesaid, and devoting the property so received, and the income and increase thereof, to the uses aforesaid, in their respective counties, cities and counties, cities, and towns, as may be necessary.

COMMISSIONERS' NOTE: This and the preceding section are drawn from an act approved February 10, 1881 (Stats. 1881-2.) Said act does not appear to have been repealed, either expressly or by implication; hence, its provisions are embodied here, though perhaps not necessary, as the validity of bequests to corporations, subject to the limitations provided in section 1313, *supra*, was clearly established by the court in *Estate of Robinson*, 63 Cal. 620.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

Section 1317. Testator's intention to be carried out.
1318. Intention to be ascertained from the will.
1319. Rules of interpretation.
1320. Several instruments are to be taken together.
1321. Harmonizing various parts.
1322. In what case devise not affected.
1323. When ambiguous or doubtful.
1324. Words taken in ordinary sense.
1325. Words to receive an operative construction.
1326. Intestacy to be avoided.
1327. Effect of technical words.
1328. Technical words not necessary.
1329. Certain words not necessary to pass a fee.
1330. Power to devise, how executed by terms of will.
1331. Devise or bequest of all real or all personal property, or both.
1332. Residuary clause.
1333. Same.
1334. "Heirs," "relatives," "issues," "descendants," etc.
1335. Words of donation and limitations.
1336. To what time words refer.
1337. Devise or bequest to a class.
1338. When conversion takes effect.
1339. When child born after testator's death takes under will.
1340. Mistakes and omissions.
1341. When devises and bequests vest.
1342. When cannot be divested.
1343. Death of a devisee or legatee before testator.
1344. Interests in remainder are not affected.
1345. Conditional devises and bequests.
1346. Condition precedent defined.
1347. Effect of condition precedent.
1348. Conditions precedent, when deemed performed.
1349. Conditions subsequent, defined.
1350. Devisees, etc., take as tenants in common.
1351. Advancements, when ademptions.

Testator's intention to be carried out.

SEC. 1317. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

Intention to be ascertained from the will.

SEC. 1318. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

Rules of interpretation.

SEC. 1319. In interpreting a will, subject to the law of this state, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

Several instruments are to be taken together.

SEC. 1320. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Harmonizing various parts.

SEC. 1321. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

In what case devise not affected.

SEC. 1322. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

When ambiguous or doubtful.

SEC. 1323. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

Words taken in ordinary sense.

SEC. 1324. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Words to receive an operative construction.

SEC. 1325. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

Intestacy to be avoided.

SEC. 1326. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Effect of technical words.

SEC. 1327. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Technical words are not necessary.

SEC. 1328. Technical words are not necessary to give effect to any species of disposition by a will.

Certain words are not necessary to pass a fee.

SEC. 1329. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

Power to devise, how executed by terms of will.

SEC. 1330. Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator.

Devise or bequest of all real or personal property, or both.

SEC. 1331. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Residuary clauses.

SEC. 1332. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

Same.

SEC. 1333. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

"Heirs," "relatives," "issue," "descendants," etc.

SEC. 1334. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," of "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin," or any person, without other words of qualification, and when the terms are used as terms of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the title on succession.

Words of donation and of limitation.

SEC. 1335. The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person.

To what time words refer.

SEC. 1336. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Devise or bequest to a class.

SEC. 1337. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

When conversion takes effect.

SEC. 1338. When a will directs the conversion of real property into money, such property and all its proceeds, as to those for whose use the conversion is intended to be made, must be deemed personal property from the time of the testator's death.

COMMISSIONERS' NOTE: The words "as to those for whose use the conversion is intended to be made," have been added, in accordance with the construction placed upon the section by the supreme court of this state, in the cases of *Estep* vs. *Armstrong*, 1 Cal. 659, and *Fatjo* vs. *Swasey*, 111 Cal. 628, where it was held that the conversion does not apply to others than those for whose use it is intended to be made.

When child born after testator's death takes under will.

SEC. 1339. A child conceived before, but not born until after a testator's death, or any other period when a disposition

to a class vests in right or in possession, takes, if answering to the description of the class.

Mistakes and omissions.

SEC. 1340. When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the descriptions, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

When devises and bequests vest.

SEC. 1341. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

When cannot be divested.

SEC. 1342. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

Death of devisee or legatee before testator.

SEC. 1343. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 1310.

Interests in remainder are not affected.

SEC. 1344. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

Conditional devises and bequests.

SEC. 1345. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

Condition precedent, defined.

SEC. 1346. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Effect of condition precedent.

SEC. 1347. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such condition is impossible, in which case the disposition vests, unless the condition was the sole motive

thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Conditions precedent, when deemed performed.

SEC. 1348. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

Conditions subsequent, defined.

SEC. 1349. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Devisees, etc., take as tenants in common.

SEC. 1350. A devise or legacy given to more than one person vests in them as owners in common.

Advancements, when ademptions.

SEC. 1351. Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

Section 1357. Nature and designation of legacies.
1358. Property of intestate chargeable with debts.
1359. Order of resort to property for payment of debts.
1360. Order of resort to property for payment of legacies.
1361. Same.
1362. Abatement.
1363. Specific devises and legacies.
1364. Heir's conveyances good, unless will proved within four years.
1365. Possession of legatees.
1366. Bequest of interest.
1367. Satisfaction of legacy, etc.
1368. Legacies, when due..
1369. Interest.
1370. Construction of these rules.
1371. Executor according to the tenor.
1372. Power to appoint is invalid.
1373. Executor not to act till qualified.
1374. Provisions as to revocations.
1375. Execution and construction of prior wills not affected.
1376. The law of the State applies.
1377. Liability of beneficiaries for testator's obligations.

Nature and designation of legacies.

SEC. 1357. Legacies are distinguished and designated, according to their nature, as follows:

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator;

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy;

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy;

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged;

5. All other legacies are general legacies.

Property of intestate chargeable with debts.

SEC. 1358. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the Code of Civil Procedure.

Order of resort to property for payment of debts.

SEC. 1359. The property of a testator, except as otherwise specially provided for in this code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts;

2. Property not disposed of by the will;

3. Property which is devised or bequeathed to a residuary legatee;

4. Property which is not specifically devised or bequeathed; and,

5. All other property ratably.

Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for.

Order of resort to property for payment of legacies.

SEC. 1360. The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies;

2. Property not disposed of by the will;

3. Property which is devised or bequeathed to a residuary legatee;

4. Property which is specifically devised or bequeathed.

Same.

SEC. 1361. Legacies to husband, widow or kindred of any class are chargeable for debts only after legacies to persons not related to the testator.

COMMISSIONERS' NOTE: The original Code Commissioners appended to this section the following note: "The rule of the text seems to be so well founded in natural justice, and to accord so nearly to that which is presumed to be the natural inclination of the testator, that approbation is accorded to it, notwithstanding the converse is laid down in Redf. on Wills, ed. 1866, pt. 2, p. 552, subd. 12; where, too, it is conceded that in all probability other legacies would not have been made if the testator could have supposed that the legacies to those naturally depending on him would have from any cause failed. When a widow receives in lieu of her dower, the legacy is preferred as a consideration; and so may a legacy be exempt from abatement, made to a wife or child destitute of other provision. This was so held in *Duncan* vs. *Alt*, 3 Pa. St. 382, Gibson, C. J."

From the foregoing it would appear that said Commissioners intended that the legacies to husband, widow, or kindred should not be subject to abatement until after legacies to persons not related to testator, but the supreme court in *Estate of Apple*, 66 Cal. 434, held that the word "chargeable," as used in this section, means "chargeable for debts," and that to this extent only are legacies to husband, widow, or kindred given a preference over legacies of the same class to strangers. The words "for debts" are therefore added, in order that the section may be in exact accord with its construction by the court.

Abatement.

SEC. 1362. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

COMMISSIONERS' NOTE: See note to section 1361, *supra*.

Specific devises and legacies.

SEC. 1363. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the superior court to sell the property devised and bequeathed, in the cases herein provided.

Heir's conveyance good, unless will is proved within four years.

SEC. 1364. The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is

claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the superior court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the deviser's death.

Possession of legatees.

SEC. 1365. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

COMMISSIONERS' NOTE: Rule applicable only to specific legacies. See *In re Garrity*, 108 Cal. 463.

Bequest of interest.

SEC. 1366. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Satisfaction of legacy, etc.

SEC. 1367. A legacy, or a gift in contemplation, fear, or peril of death, may be satisfied before death.

Legacies, when due.

SEC. 1368. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

Interest.

SEC. 1369. Legacies bear interest from the time they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Construction of these rules.

SEC. 1370. The four preceding sections are in all cases to be controlled by a testator's express intention.

Executor according to the tenor.

SEC. 1371. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

Power to appoint is invalid.

SEC. 1372. An authority to an executor to appoint an executor is void.

Executor not to act till qualified.

SEC. 1373. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

Provisions as to revocations.

SEC. 1374. The provisions of this title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

Execution and construction of prior wills not affected.

SEC. 1375. The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or after the construction of any such will.

The law of this state applies.

SEC. 1376. The validity and interpretation of wills, wherever made, are governed, when relating to property within this state, by the law of this state.

Liability of beneficiaries for testator's obligations.

SEC. 1377. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

TITLE VII.

SUCCESSION.

Section 1383. Succession defined.
1384. Who first succeeds to possession of estates not devised.
1386. Succession to and distribution of property.
1387. Illegitimate children to inherit in certain events.
1388. The mother is successor to illegitimate child.
1389. Degrees of kindred, how computed.
1390. Direct and collateral consanguinity.
1391. Direct line descending and direct line ascending.
1392. Degrees in direct line.
1393. Degrees in collateral line.
1394. Relatives of the half blood.
1395. Advancements constitute part of distributive share.
1396. Advancements, when too much, or not enough.

Section 1397. What are advancements.
1398. Value of advancements, how determined.
1399. When heir, advanced to, dies before decedent.
1400. Inheritance of husband and wife from each other.
1401. Distribution of the common property on death of wife.
1402. Distribution of common property on death of husband.
1403. Inheritance by representation.
1404. Aliens may inherit, when, and how.
1405. Succession not claimed, property to be sold and proceeds deposited.
1406. When the property and estate escheat to the state.
1407. Property escheated subject to charges as other property.
1408. Successor liable for decedent's obligations.

Succession defined.

SEC. 1383. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Who first succeeds to possession of estates not devised.

SEC. 1384. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the superior court, and to the possession of any administrator appointed by that court for the purposes of administration.

SEC. 1385. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 236), the above section was repealed, and for that reason the same is here omitted.

Succession to and distribution of property.

SEC. 1386. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, other-

wise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation;

2. If the decedent leave no issue, the estate goes one half to the surviving husband or wife, and the other to the decedent's father and mother in equal shares, and if either be dead the whole of said half goes to the other. If there be no father or mother, then one half goes in equal shares to the brothers and sisters of decedent, and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leave no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either be dead then to the other;

3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of decedent, and to the children or grandchildren of any deceased brother or sister, by right of representation;

5. If the decedent leave a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

6. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote;

7. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation;

8. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the

issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

9. If the decedent be a widow or widower, and leave no kindred, and the estate or any portion thereof was common property of such decedent, and his or her deceased spouse, while such spouse was living, such common property shall go to the children of such deceased spouse, and the descendants thereof, and if none, then to the father of such deceased spouse, or if he be dead, to the mother. If there be no father nor mother, then such property shall go to the brothers and sisters of such deceased spouse, in equal shares, and to the lawful issue of any deceased brother or sister of such deceased spouse by right of representation;

10. If the decedent leave no husband, wife, or kindred, and there be no heirs to take his estate or any portion thereof, under subdivision nine of this section, the same escheats to the state for the support of common schools.

COMMISSIONERS' NOTE: The words "or grandchildren" have been inserted in subdivisions 2 and 3 of this section, so as to extend the right of succession to that class of descendants, a right which did not exist under the section originally. (See *Estate of Curry*, 39 Cal. 529.)

There has also been inserted in subdivision 5 the words "nor the children or grandchildren of a deceased brother or sister." In *Estate of Ingram*, 78 Cal. 586, the deceased left no surviving father or mother, brother or sister, but did leave a surviving husband and certain children and grandchildren of a deceased sister. The court held that the entire estate should be distributed to the husband, saying: "It is vain to argue against the injustice of the rule, or to contend that in a case like the one at bar the children of a deceased sister *ought* to have a share in the estate when there is not any surviving brother or sister, as well as when there *is*. Succession to estates is purely a matter of statutory regulation, which can not be changed by courts." These changes have been suggested in view of this evident recognition by the court of the injustice of the former statute, an injustice which must be apparent to all, and of the disposition by the court, as shown in *Estate of Wardell*, 57 Cal. 484, and *In re Rhoton* vs. *Blevin*, 99 Cal. 645, and other cases, to enlarge the common-law rule with reference to descent and distribution. Subdivision 9 has also been amended by inserting therein a provision that the children of a deceased spouse shall inherit common property before it shall go to the father or mother of such deceased spouse.

Illegitimate children to inherit in certain events.

SEC. 1387. Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his

death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

The mother is successor to illegitimate child.

SEC. 1388. If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

Degrees of kindred, how computed.

SEC. 1389. The degree of kindred is established by the number of generations, and each generation is called a degree.

Direct and collateral consanguinity.

SEC. 1390. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

Direct line descending and direct line ascending.

SEC. 1391. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends.

Degrees in direct line.

SEC. 1392. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

Degrees in collateral line.

SEC. 1393. In the collateral line the degrees are counted by generations from one of the relations up to the common ances-

tor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins-german in the fourth, and so on.

Relatives of the half blood.

SEC. 1394. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

Advancements constitute part of distributive share.

SEC. 1395. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

Advancements, when too much, or not enough.

SEC. 1396. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

What are advancements.

SEC. 1397. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowleged in writing as such, by the child or other successor or heir.

Value of advancements, how determined.

SEC. 1398. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

When heir advanced to, dies before decedent.

SEC. 1399. If any child, or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

Inheritance of husband and wife from each other.

SEC. 1400. The provisions of the preceding section of this title, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

Distribution of common property on death of wife.

SEC. 1401. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband.

Distribution of common property on death of husband.

SEC. 1402. Upon the death of the husband, one half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants, are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

Inheritance by representation.

SEC. 1403. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Aliens may inherit, when, and how.

SEC. 1404. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

Succession not claimed, property to be sold and proceeds deposited.

SEC. 1405. When succession is not claimed as provided in the preceding section, the superior court, on information, must direct the attorney-general to reduce the property to the possession of the state, or to cause the same to be sold, and the same, or the proceeds thereof, to be deposited in the state treasury for the benefit of such non-resident foreigner, or his legal representative, to be paid to him whenever, within five years after such deposit, he appears and obtains a judgment or order of such court that he is entitled to succeed thereto.

COMMISSIONERS' NOTE: The amendment consists in changing the word "district" to "superior" and in striking out of this section all after the word "deposit," and inserting in lieu thereof the following: "he appears and obtains a judgment or order of such court that he is entitled to succeed thereto."

When the property and estate escheat to the state.

SEC. 1406. When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. Thereupon the property shall be delivered, or the proceeds paid, to the claimant, on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the state, and is placed by the state treasurer to the credit of the school fund.

COMMISSIONERS' NOTE: It is suggested that this section be amended by striking out all preceding the words "or the proceeds paid," and inserting in lieu thereof the following: "When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. Thereupon the property shall be delivered," which makes this section harmonize with section 1405 as amended.

Property escheated, subject to charges as other property.

SEC. 1407. Real property passing to the state under the last section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of Title VIII, Part III, of the Code of Civil Procedure.

Successor liable for decedent's obligations.

SEC. 1408. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure.

TITLE VIII.

WATER RIGHTS.

Section 1410. Rights to water may be acquired by appropriation.
1411. Appropriation must be for a useful purpose.
1412. Point of diversion may be changed.
1413. Water may be turned into natural channels.
1414. First in time, first in right.
1415. Notice of appropriation, copy must be recorded.
1416. Diligence in appropriating necessary.
1417. Completion defined.
1418. Doctrine of relation applied.
1419. Effect of failure to comply with rules.
1420. Liability of persons using water or ditch jointly.
1421. Same.
1422. Same.
1423. Who may bring action.

COMMISSIONERS' NOTE: This title deals only with the acquisition of water by appropriation, its use and the rights of appropriators and proprietors. For the formation, government, and control of drainage, reclamation, protection, and irrigation districts, see Political Code, sections ——— to ———. For a full discussion of the questions involved in this title, see the celebrated case of *Lux* vs. *Haggin*, 69 Cal. 265, numerously cited in later reports.

Rights to water may be acquired by appropriation.

SEC. 1410. The right to the use of running water flowing in a river or stream, or down a cañon or ravine, may be acquired by appropriation.

Appropriation must be for a useful purpose.

SEC. 1411. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases for a period of five years to use it for such purpose, the right ceases.

COMMISSIONERS' NOTE: In the case of *Smith* vs. *Hawkins*, 110 Cal. 122, the supreme court, in construing this section, said: "In this state five years is the period fixed by law for the ripening of an adverse possession into a prescriptive title. Five years is also the period declared by law after which a prescriptive right depending upon enjoyment is lost for nonuser; and for analogous reasons, we consider it to be a just and proper measure of time for the forfeiture of an appropriator's rights for a failure to use the water for a beneficial purpose." In accordance with that decision, the amendment, fixing the time of nonuser, has been inserted.

Point of diversion may be changed.

SEC. 1412. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

Water may be turned into natural channels.

SEC. 1413. The water appropriated may be turned into the channel of the same or another stream, and mingled with its water, and then reclaimed; but in reclaiming it. the water already appropriated by another must not be diminished.

First in time, first in right.

SEC. 1414. As between appropriators, the one first in time is the first in right.

Notice of appropriation. A copy must be recorded.

SEC. 1415. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure;

2. The purposes for which he claims it, and the place of intended use;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it.

A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

Diligence in appropriating, necessary.

SEC. 1416. Within sixty days after the notice is posted the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snows or rain; *provided*, that if the erection of a dam has been recommended by the California debris commission at or near the place where it is intended to divert the water, the claimant shall have sixty days after the completion of such dam in which to commence the excavation or construction of the works in which he intends to divert the water.

Completion defined.

SEC. 1417. By "completion" is meant conducting the waters to the place of intended use.

Doctrine of relation applied.

SEC. 1418. By a compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.

Effect of failure to comply with use.

SEC. 1419. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith; *provided, however*, that one who appropriates water by an actual diversion thereof acquires the right to the use thereof as against a claimant who subsequently posts his notices in accordance with section 1415, and proceeds thereafter to perfect his rights, although such prior appropriator has not followed the statute in making his appropriation.

COMMISSIONERS' NOTE: The amendment to this section consists in adding the proviso thereto, and is rendered desirable by reason of the decision of the supreme court in *Wells* vs. *Mantes*, 99 Cal. 583, where it was held that the word "claimants," as used in this section, "refers to a party posting and recording the notices required by the provisions of section 1415, Civil Code, and does not apply to an appropriator *by actual diversion*," and "that a failure to comply with the rules there [in the Civil Code] laid down, does not deprive an appropriator by actual diversion, of the right to the use of the water as against a subsequent claimant who complies therewith."

Liability of persons using water or ditch jointly.

SEC. 1420. When two or more persons are associated by agreement in the use of a ditch, pipe, flume, dam, reservoir, or other works, or are using for the irrigation of land a ditch, pipe, flume, dam, reservoir, or other works, to the construction of which they or their grantors have contributed, each of them shall be liable to the other for the reasonable expense of maintaining and repairing the same in proportion to the share in the use of the water to which he is entitled.

Same.

SEC. 1421. If any of them refuse or neglect, after demand in writing, to pay his proportion of such expenses, he shall be liable therefor in an action for contribution in the nature of an action on the case, and in any judgment obtained against him, interest from the time of such demand at the rate of two per cent per month may be included.

Same.

SEC. 1422. If any of them willfully appropriate to his own use more than his proportionate share of the water from such ditch or flume, to the detriment of his associates, or any of them, he shall be liable in damages in treble the value of the water so appropriated in excess of his proper share.

Who may bring action.

SEC. 1423. The actions provided for in sections 1421 and 1422 may be brought by any or either of the parties injured, and may be joint or several.

COMMISSIONERS' NOTE: The preceding four sections were embodied in "An act for the protection of owners of ditches and flumes," approved March 16, 1889 (Stats. 1889, 202). The Commissioners have added thereto the provision as to dams, reservoirs, water rights and other works.

TITLE IX.

HYDRAULIC MINING.

Section 1424. Where hydraulic mining can be carried on.
1425. Meaning of hydraulic mining.

Where hydraulic mining can be carried on.

SEC. 1424. The business of hydraulic mining may be carried on within the State of California wherever and whenever the same can be carried on without material injury to the navigable streams, or the lands adjacent thereto.

Meaning of hydraulic mining.

SEC. 1425. Hydraulic mining, within the meaning of this title, is mining by means of the application of water, under pressure, through a nozzle, against a natural bank.

DIVISION THIRD.

PART I. OBLIGATIONS IN GENERAL. [1427–1543.]
II. CONTRACTS. [1549–1701.]
III. OBLIGATIONS IMPOSED BY LAW. [1708–1715.]
IV. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS. [1721–3268.]

PART I.

OBLIGATIONS IN GENERAL.

TITLE I. DEFINITION OF OBLIGATIONS. [1427–1428.]
II. INTERPRETATION OF OBLIGATIONS. [1429–1451.]
III. TRANSFER OF OBLIGATIONS. [1457–1467.]
IV. EXTINCTION OF OBLIGATIONS. [1473–1543.]

TITLE I.

DEFINITION OF OBLIGATIONS.

Section 1427. Obligation defined.
1428. From what arises. How enforced.

Obligation defined.

SEC. 1427. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

From what arises. How enforced.

SEC. 1428. An obligation arises either from:

1. The contract of the parties; or,

2. The operation of law.

An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

CHAPTER I. GENERAL RULES OF INTERPRETATION [1429.]
II. JOINT OR SEVERAL OBLIGATIONS [1430–1432.]
III. CONDITIONAL OBLIGATIONS [1442.]
IV. ALTERNATIVE OBLIGATIONS [1448–1451.]

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

Section 1429. General rules.

General rules.

SEC. 1429. The rules which govern the interpretation of contracts are prescribed by Part II of this division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

Section 1430. Obligations, kinds of.
1431. When joint.
1432. Contribution between joint parties.

Obligations, kinds of.

SEC. 1430. An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;
2. Several; or,
3. Joint and several.

When joint.

SEC. 1431. An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

Contribution between joint parties.

SEC. 1432. A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all,

may require a proportionate contribution from all the parties joined with him.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

Section 1434. Conditional obligation defined.
1435. Conditions, kinds of.
1436. Conditions precedent defined.
1437. Conditions concurrent defined.
1438. Conditions subsequent defined.
1439. Performance, what necessary before can be required.
1440. Same; when not necessary.
1441. Impossible or unlawful conditions void.
1442. Conditions involving forfeiture, how construed.

Conditional obligation defined.

SEC. 1434. An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

Conditions, kinds of.

SEC. 1435. Conditions may be precedent, concurrent, or subsequent.

Conditions precedent defined.

SEC. 1436. A condition precedent is one which is to be performed before some right dependent thereon accrued, or some act dependent thereon is performed.

Conditions concurrent defined.

SEC. 1437. Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

Conditions subsequent defined.

SEC. 1438. A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

Performance, what necessary before can be required.

SEC. 1439. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section.

Same; when not necessary.

SEC. 1440. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party.

Impossible or unlawful conditions void.

SEC. 1441. A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.

Conditions involving forfeiture, how construed.

SEC. 1442. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

Section 1448. Alternative acts, who has the right of selection.
1449. Right of selection, how lost.
1450. Alternatives indivisible.
1451. Nullity of one or more of alternative obligations.

Alternative acts, who has the right of selection.

SEC. 1448. If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

Right of selection, how lost.

SEC. 1449. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose; or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

Alternatives indivisible.

SEC. 1450. The party having his right of selection between alternative acts must select one of them in its entirety, and cannot select part of one and part of another without the consent of the other party.

Nullity of one or more of alternative obligations.

SEC. 1451. If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other stood alone.

TITLE III.

TRANSFER OF OBLIGATIONS.

Section 1457. Burden of obligation, how transferable.
1458. Rights arising out of obligation, transferable.
1459. Non-negotiable instruments may be transferred.
1460. Covenants running with the land defined.
1461. What covenants run with the land.
1462. Same.
1463. Same.
1464. What covenants run with the land when assigns are named.
1465. Who are bound by covenant.
1466. Who are not.
1467. Apportionment of covenants.

Burden of obligation, how transferable.

SEC. 1457. The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 1466.

Rights arising out of obligation, transferable.

SEC. 1458. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

Non-negotiable instruments may be transferred.

SEC. 1459. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

Covenants running with the land defined.

SEC. 1460. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

What covenants run with the land.

SEC. 1461. The only covenants which run with the land are those specified in this title, and those which are incidental thereto.

Same.

SEC. 1462. Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.

Same.

SEC. 1463. The last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments on the land, on the part of a grantee.

What covenants run with the land when assigns are named.

SEC. 1464. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns, or to the assigns of the covenantee, runs with land so far only as the assigns thus mentioned are concerned.

Who are bound by covenants.

SEC. 1465. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property.

Who are not.

SEC. 1466. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits.

Apportionment of covenants.

SEC. 1467. Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them, respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I. PERFORMANCE. [1473–1479.]
II. OFFER OF PERFORMANCE. [1485–1505.]
III. PREVENTION OF PERFORMANCE OR OFFER. [1511–1515.]
IV. ACCORD AND SATISFACTION. [1521–1524.]
V. NOVATION. [1530–1533.]
VI. RELEASE. [1541–1543.]

CHAPTER I.

PERFORMANCE.

Section 1473. Obligation extinguished by performance.
1474. Same; by one of several joint debtors.
1475. Same; to one of several joint creditors.
1476. Effect of directions by creditors.
1477. Partial performance.
1478. Payment defined.
1479. Application of general performance.

Obligation extinguished by performance.

SEC. 1473. Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

Same; by one of several joint debtors.

SEC. 1474. Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

Same; to one of several joint creditors.

SEC. 1475. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the title on deposit.

Effect of directions by creditors.

SEC. 1476. If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance

Partial performance.

SEC. 1477. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

Payment defined.

SEC. 1478. Performance of an obligation for the delivery of money only is called payment.

Application of general performance.

SEC. 1479. Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied;

2. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him, both individually and as trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor;

3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

(1) Of interest due at the time of the performance;

(2) Of principal due at that time;

(3) Of the obligation earliest in date of maturity;

(4) Of an obligation not secured by a lien or collateral undertaking;

(5) Of an obligation secured by a lien or collateral undertaking.

CHAPTER II.

OFFER OF PERFORMANCE.

Section 1485. Obligation extinguished by offer of performance.
1486. Offer of partial performance.
1487. Offer of performance, by whom to be made.
1488. Same; to whom to be made.
1489. Same; where may be made.
1490. Same; when must be made, if time fixed.
1491. Same; if time not fixed.
1492. Same; with compensation after delay in performance.
1493. Same; must be made in good faith.
1494. Same; must be free from conditions.
1495. Same; ability and willingness essential.
1496. Same; production of things to be delivered not necessary.
1497. Same; thing offered to be kept separate.
1498. Same; conditions precedent.
1499. Written receipts may be required.
1500. Extinction of pecuniary obligation.
1501. Objections to mode of offer, when waived.
1502. Title to thing offered.
1503. Custody of thing offered.
1504. Effect of offer on incidents of obligation.
1505. Creditor's retention of thing which he refuses to accept.

Obligation extinguished by offer of performance.

SEC. 1485. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

Offer of partial performance.

SEC. 1486. An offer of partial performance is of no effect.

Offer of performance, by whom to be made.

SEC. 1487. An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

Same; to whom to be made.

SEC. 1488. An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and, if not, wherever the creditor may be found.

Same; where may be made.

SEC. 1489. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor;

2. Wherever the person to whom the offer ought to be made can be found;

3. If such person cannot, with reasonable diligence, be found within this state, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the state.

4. If this cannot be done, then at any place within this state.

Same; when must be made if time fixed.

SEC. 1490. Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

Same; if time not fixed.

SEC. 1491. Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

Same; with compensation after delay in performance.

SEC. 1492. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any person, in the meantime.

Same; must be made in good faith.

SEC. 1493. An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

Same; must be free from conditions.

SEC. 1494. An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

Same; ability and willingness essential.

SEC. 1495. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

Same; production of thing to be delivered not necessary.

SEC. 1496. The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted.

Same; thing offered to be kept separate.

SEC. 1497. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

Same; conditions precedent.

SEC. 1498. When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

Written receipt may be required.

SEC. 1499. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

Extinction of pecuniary obligation.

SEC. 1500. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this state, of good repute, and notice thereof is given to the creditor.

Objection to mode of offer, when waived.

SEC. 1501. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor if not then stated.

Title to thing offered.

SEC. 1502. The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

Custody of thing offered.

SEC. 1503. The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

Effect of offer upon incidents of obligation.

SEC. 1504. An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation

and has the same effect upon all its incidents as a performance thereof.

Creditor's retention of thing which he refuses to accept.

SEC. 1505. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

Section 1511. What excuses performance, etc.
1512. Performance prevented by creditor, effect of.
1514. Performance prevented by any cause, effect of.
1515. Refusal to accept performance before offer, effect of.
1516. Impossibility of performance defined.

What excuses performance, etc.

SEC. 1511. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it by any act of the creditor intended or naturally tending to have that effect done at or before the time at which such performance or offer may be made, and not rescinded before that time.

Performance prevented by creditor, effect of.

SEC. 1512. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

SEC. 1513. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Stats. 1873–74, 240), the above section was repealed, and for that reason the same has been here omitted.

Performance prevented by any cause, effect of.

SEC. 1514. If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

Refusal to accept performance before offer, effect of.

SEC. 1515. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

Impossibility of performance defined.

SEC. 1516. The impossibility of performance which will excuse the performance of a contract by the parties thereto must consist in the nature of the thing to be done, and not in the inability of the parties to do it. If the thing can be accomplished by any one with proper means and the requisite skill and knowledge, the promisor is not less answerable because it is impossible to him.

COMMISSIONERS' NOTE: The preceding section is new, and is quoted from the opinion of the court in the case of *Klauber* vs. *San Diego St. Car Co.*, 95 Cal. 353.

CHAPTER IV.

ACCORD AND SATISFACTION.

Section 1521. Accord defined.
1522. Accord, effect of.
1523. Satisfaction defined.
1524. Satisfaction by part performance, when.

Accord defined.

SEC. 1521. An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

Accord, effect of.

SEC. 1522. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

Satisfaction defined.

SEC. 1523. Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction.

Satisfaction by part performance, when.

SEC. 1524. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing, for that purpose, though without any new consideration, extinguishes the obligation.

CHAPTER V.

NOVATION.

Section 1530. Novation defined.
1531. Novation, how made.
1532. Same.
1533. Same; rescission of.

Novation defined.

SEC. 1530. Novation is the substitution of a new obligation for an existing one.

Novation, how made.

SEC. 1531. Novation is made:

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation;

2. By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

Same.

SEC. 1532. Novation is made by contract, and is subject to all the rules concerning contracts in general.

Same, rescission of.

SEC. 1533. When the obligation of the third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor; or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

CHAPTER VI.

RELEASE.

Section 1541. Obligation extinguished by release.
1542. General release does not extend to certain claims.
1543. Release of several joint debtors.

Obligation extinguished by release.

SEC. 1541. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

General release does not extend to certain claims.

SEC. 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Release of several joint debtors.

SEC. 1543. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

PART II.

CONTRACTS.

TITLE I. NATURE OF A CONTRACT. [1549–1615.]
II. MANNER OF CREATING CONTRACTS. [1619–1629.]
III. INTERPRETATION OF CONTRACTS. [1635–1661.]
IV. UNLAWFUL CONTRACTS. [1667–1676.]
V. EXTINCTION OF CONTRACTS. [1682–1701.]

TITLE I.

NATURE OF A CONTRACT.

CHAPTER I. DEFINITION. [1549–1550.]
II. PARTIES. [1556–1559.]
III. CONSENT. [1565–1589.]
IV. OBJECT. [1595–1599.]
V. CONSIDERATION. [1605–1615.]

CHAPTER I.

DEFINITION.

Section 1549. Contract defined.
1550. Essential elements of contract.

Contract defined.

SEC. 1549. A contract is an agreement to do or not to do a certain thing.

Essential elements of contract.

SEC. 1550. It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. A sufficient cause or consideration.

CHAPTER II.

PARTIES.

Section 1556. Who may contract.
1557. Capacity of minors and others.
1558. Identification of parties necessary.
1559. When contract for benefit of third person may be enforced.

Who may contract.

SEC. 1556. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

Capacity of minors and others.

SEC. 1557. Minors and persons of unsound mind have only such capacity as is defined by Part I of Division I of this Code.

Identification of parties necessary.

SEC. 1558. It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.

Contract for benefit of third person, when may be enforced.

SEC. 1559. A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it.

CHAPTER III.

CONSENT.

Section 1565. Essentials of.
1566. When voidable.
1567. Apparent when not free.
1568. When deemed to have been obtained by fraud, etc.
1569. Duress defined.
1570. Menace defined.
1571. Fraud, actual or constructive.
1572. Actual fraud defined.
1573. Constructive fraud defined.
1574. Actual fraud a question of fact.
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1576. Mistake, either of fact or law.
1577. Mistake of fact defined.
1578. Mistake of law defined.
1579. Mistake of foreign law.
1580. Mutuality of consent.
1581. Communication of consent.
1582. Mode of communicating acceptance of proposal.
1583. When communication deemed complete.
1584. Acceptance by performance of conditions.
1585. Acceptance must be absolute.
1586. Revocation of proposal.
1587. Revocation, how made.
1588. Ratification of contract, void for want of consent.
1589. Assumption of obligation by acceptance of benefits.

Essentials of.

SEC. 1565. The consent of the parties to a contract must be:

1. Free;
2. Mutual; and,
3. Communicated by each to the other.

When voidable.

SEC. 1566. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.

Apparent, when not free.

SEC. 1567. An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

When deemed to have been obtained by fraud.

SEC. 1568. Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

Duress defined.

SEC. 1569. Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

Menace defined.

SEC. 1570. Menace consists in a threat:

1. Of such duress as is specified in subdivisions one and three of the last section;

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

3. Of injury to the character of any such person.

Fraud, actual or constructive.

SEC. 1571. Fraud is either actual or constructive.

Actual fraud defined.

SEC. 1572. Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

3. The suppression of that which is true, by one having knowledge or belief of the fact;

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

Constructive fraud defined.

SEC. 1573. Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any

one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

Actual fraud a question of fact.

SEC. 1574. Actual fraud is always a question of fact.

Undue influence defined.

SEC. 1575. Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

Mistake, either of fact or law.

SEC. 1576. Mistake may be either of fact or law.

Mistake of fact defined.

SEC. 1577. Mistake of fact is a mistake, not caused by the neglect of any legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

Mistake of law defined.

SEC. 1578. Mistake of law constitutes a mistake, within the meaning of this article, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

Mistake of foreign laws.

SEC. 1579. Mistake of foreign laws is a mistake of fact.

Mutuality of consent.

SEC. 1580. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain

cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

Communication of consent.

SEC. 1581. Consent can be communicated with effect only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

Mode of communicating acceptance of proposal.

SEC. 1582. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

When communication deemed complete.

SEC. 1583. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

Acceptance by performance of conditions.

SEC. 1584. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

Acceptance must be absolute.

SEC. 1585. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

Revocation of proposal, when may be made.

SEC. 1586. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

Same; how made.

SEC. 1587. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 1581 and 1583, before his acceptance has been communicated to the former;

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

3. By the failure of the acceptor to fulfill a condition precedent to acceptance;

4. By the death or insanity of the proposer.

Ratification of contract void for want of consent.

SEC. 1588. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

Assumption of obligation by acceptance of benefits.

SEC. 1589. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

CHAPTER IV.

OBJECT OF A CONTRACT.

Section 1595. Object defined.
1596. Same; requisites of.
1597. Same; what is impossible.
1598. When contract wholly void.
1599. When contract partially void.

Object defined.

SEC. 1595. The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

Same; requisites of.

SEC. 1596. The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

Same; what is impossible.

SEC. 1597. Everything is deemed possible, except that which is impossible in the nature of things.

When contract wholly void.

SEC. 1598. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

When contract partially void.

SEC. 1599. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter, and valid as to the rest.

CHAPTER V.

CONSIDERATION.

Section 1605. Good consideration defined.
1606. Same; extent of legal or moral obligation.
1607. Consideration must be lawful.
1608. Effect of illegality.
1609. Consideration may be executed or executory.
1610. Executory, amount need not be specified; how ascertained.
1611. Same.
1612. Effect of impossibility of ascertaining consideration.
1613. Same.
1614. Written instrument imports consideration.
1615. Burden of proof to invalidate sufficient consideration.

Good consideration defined.

SEC. 1605. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any detriment or prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

COMMISSIONERS' NOTE: An amendment to the above section is suggested by adding the word "detriment," it being more frequently used than the word "prejudice," where the courts have referred to or construed the section. (See *Bylth* vs. *Robinson*, 104 Cal. 239.)

Same; extent of legal or moral obligation.

SEC. 1606. An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or detriment or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

COMMISSIONERS' NOTE: Amendment same as to preceding section.

Consideration must be lawful.

SEC. 1607. The consideration of a contract must be lawful within the meaning of section 1667.

Effect of illegality.

SEC. 1608. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

Consideration may be executed or executory.

SEC. 1609. A consideration may be executed or executory in whole or in part. In so far as it is executory it is subject to the provisions of Chapter IV of this title.

Executory, amount need not be specified; how ascertained.

SEC. 1610. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

Same.

SEC. 1611. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

Effect of impossibility of ascertaining consideration.

SEC. 1612. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

Same.

SEC. 1613. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

Written instrument imports consideration.

SEC. 1614. A written instrument is presumptive evidence of a consideration.

Burden of proof to invalidate sufficient consideration.

SEC. 1615. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

TITLE II.

MANNER OF CREATING CONTRACTS.

Section 1619. Contracts, express or implied.
1620. Express contract defined.
1621. Implied contract defined.
1622. What contracts may be oral.
1623. Contract not in writing, through fraud, may be enforced against fraudulent party.
1624. What contracts must be written.
1625. Effect of writing.
1626. Contract in writing, takes effect when.

Section 1627. Provisions of chapter on transfers in general, apply to written contracts.
1628. Corporate seal, how affixed.
1629. Distinctions between sealed and unsealed instruments abolished.

Contracts, express or implied.

SEC. 1619. A contract is either express or implied.

Express contract defined.

SEC. 1620. An express contract is one, the terms of which are stated in words.

Implied contract defined.

SEC. 1621. An implied contract is one, the existence and terms of which are manifested by conduct.

What contracts may be oral.

SEC. 1622. All contracts may be oral, except such as are specially required by statute to be in writing.

Contract not in writing through fraud, may be enforced against fraudulent party.

SEC. 1623. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his detriment or prejudice, may enforce it against the fraudulent party.

What contracts must be written.

SEC. 1624. The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 2794;

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the sale of personal property, at a price not less than two hundred dollars, unless the buyer accept or receive part of such property, or the evidences, or some of them, of such property, or pay at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and

the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

COMMISSIONERS' NOTE: In subdivision 3 of section 14, *ante*, the words "personal property" are defined as including "money, goods, chattels, things in action, and evidences of debt." In a note to section 1739, the Commissioners of 1870 say: "It will be observed that the phrase 'personal property' has been substituted for the words 'goods, wares and merchandise' of the English statute, and the words 'goods, chattels, or things in action' of our statute (Stats. 1850, 266, sec. 13)." For the sake of brevity and uniformity an amendment to subdivision 4 of the above section is now suggested by striking out the words "goods, chattels, or things in action," and inserting the phrase "personal property."

Effect of writing.

SEC. 1625. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

Contract in writing takes effect, when.

SEC. 1626. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

Provisions of chapter on transfers in general apply to written contracts.

SEC. 1627. The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

Corporate seal, how affixed.

SEC. 1628. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

Distinctions between sealed and unsealed instruments abolished.

SEC. 1629. All distinctions between sealed and unsealed instruments are abolished.

TITLE III.

INTERPRETATION OF CONTRACTS.

Section 1635. Uniformity of interpretation.
1636. How to be interpreted.
1637. Intention of parties, how ascertained.
1638. Language to govern, if clear.
1639. Writing alone to govern if possible.
1640. Writing, erroneous parts disregarded.
1641. Effect to be given to every part if practicable.
1642. Several contracts, when taken together.
1643. Interpretation to favor validity of contract.
1644. Sense in which words to be taken.
1645. Technical words.
1646. Law of what place to govern.
1647. May be explained by circumstances.
1648. Contract restricted to its evident object.
1649. Interpretation in sense in which promisor believed promisee to rely.
1650. Particular clause subordinate to general intent.
1651. Partly written and partly printed, how interpreted.
1652. Repugnancies, how reconciled.
1653. Inconsistent words rejected.
1654. In cases of uncertainty, how interpreted.
1655. Reasonable stipulations, when implied.
1656. Necessary incidents implied.
1657. Time of performance.
1659. When joint and several.
1660. Same.
1661. Executed and executory contracts, defined.

Uniformity of interpretation.

SEC. 1635. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

How to be interpreted.

SEC. 1636. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

Intention of parties, how ascertained.

SEC. 1637. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

Language to govern, if clear.

SEC. 1638. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Writing alone to govern if possible.

SEC. 1639. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this title.

Writing, erroneous parts disregarded.

SEC. 1640. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

Effect to be given to every part if practicable.

SEC. 1641. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

Several contracts, when taken together.

SEC. 1642. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

Interpretation to favor validity of contract.

SEC. 1643. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

Sense in which words to be taken.

SEC. 1644. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Sense in which technical words to be taken.

SEC. 1645. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

Law of what place to govern.

SEC. 1646. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

May be explained by circumstances.

SEC. 1647. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

Restricted to its evident object.

SEC. 1648. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

Interpretation in sense in which promisor believed promisee to rely.

SEC. 1649. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

Particular clause subordinate to general intent.

SEC. 1650. Particular clauses of a contract are subordinate to its general intent.

Partly written and partly printed, how interpreted.

SEC. 1651. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

Repugnancies, how reconciled.

SEC. 1652. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

Inconsistent words rejected.

SEC. 1653. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

In cases of uncertainty, how interpreted.

SEC. 1654. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to

exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

Reasonable stipulations, when implied.

SEC. 1655. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

Necessary incidents implied.

SEC. 1656. All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

Time of performance.

SEC. 1657. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

SEC. 1658. *Omitted.*

When joint and several.

SEC. 1659. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

Same.

SEC. 1660. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

Executed and executory contracts, defined.

SEC. 1661. An executed contract is one, the object of which is fully performed. All others are executory.

TITLE IV.

UNLAWFUL CONTRACTS.

Section 1667. What is unlawful.
1668. What contracts against policy of the law.
1670. Contract fixing damages, void.
1671. Exception.
1673. Contract in restraint of trade, void.
1674. Exception in favor of sale of good will.
1675. Exception in favor of partnership agreements.
1676. Contract in restraintof marriage, void.

What is unlawful.

SEC. 1667. That is not lawful which is:

1. Contrary to an express provision of law;

2. Contrary to the policy of express law, though not expressly prohibited;

3. Otherwise contrary to good morals.

What contracts against policy of the law.

SEC. 1668. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

SEC. 1669. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Stats. 1873–74, 242), the above section was repealed, and for that reason the same has been here omitted.

Contract fixing damages, void.

SEC. 1670. Every contract by which the amount of damages to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

Exception.

SEC. 1671. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damages sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

SEC. 1672. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Stats. 1873–74, 242), the above section was repealed, and for that reason the same has been here omitted.

Contract in restraint of trade, void.

SEC. 1673. Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void.

Exception in favor of sale of good will.

SEC. 1674. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

Exception in favor of partnership agreements.

SEC. 1675. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

Contract in restraint of marriage, void.

SEC. 1676. Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. CONTRACTS, HOW EXTINGUISHED. [1682.]
II. RESCISSION. [1688–1691.]
III. ALTERATION AND CANCELLATION. [1697–1701.]

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

Contract, how extinguished.

SEC. 1682. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

CHAPTER II.

RESCISSION.

Section 1688. Rescission extinguishes contract.
1689. When party may rescind.
1690. When stipulations against right to rescind do not defeat it.
1691. Rescission, how effected.

Rescission extinguishes contract.

SEC. 1688. A contract is extinguished by its rescission.

When party may rescind.

SEC. 1689. A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void for any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

When stipulations against right to rescind do not defeat it.

SEC. 1690. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a manner essential to the inducement of the contract, and is not capable of exact and entire compensation.

Rescission, how effected.

SEC. 1691. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

CHAPTER III.

ALTERATION AND CANCELLATION.

Section 1697. Alteration of verbal contract, how made and effect of.
1698. Sealed contracts, how modified.
1699. Extinction by cancellation, etc.
1700. Extinction by unauthorized alteration.
1701. Alteration of duplicate, not to prejudice.

Alteration of verbal contract, how made and effect of.

SEC. 1697. A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

Alteration of written contract, how made.

SEC. 1698. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

Extinction by cancellation, etc.

SEC. 1699. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

Extinction by unauthorized alteration.

SEC. 1700. The intentional destruction, cancellation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

Alteration of duplicate not to prejudice.

SEC. 1701. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART III.

OBLIGATIONS IMPOSED BY LAW.

Section 1708. Abstinence from injury.
1709. Willful deceit, ground for damages.
1710. Deceit defined.
1711. Deceit upon the public deemed deceit upon individuals.
1712. Restoration of thing wrongfully acquired.
1713. When demand necessary.
1714. Responsibility for willful acts, negligence, etc.
1715. Other obligations.

Abstinence from injury.

SEC. 1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

Willful deceit, ground for damages.

SEC. 1709. One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

Deceit defined.

SEC. 1710. A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of the facts which are likely to mislead for want of communication of that fact; or,

4. A promise, made without any intention of performing it.

Deceit upon the public deemed deceit upon individuals.

SEC. 1711. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

Restoration of thing wrongfully acquired.

SEC. 1712. One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

When demand necessary.

SEC. 1713. The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

Responsibility for willful acts, negligence, etc.

SEC. 1714. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief.

Other obligations.

SEC. 1715. Other obligations are prescribed by Divisions I and II of this code.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

TITLE I. SALE. [1721–1798.]
II. EXCHANGE. [1804–1807.]
III. DEPOSIT. [1813–1878.]
IV. LOAN. [1884–1920.]
V. HIRING. [1925–1959.]
VI. SERVICE. [1965–2079.]
VII. CARRIAGE. [2085–2209.]
VIII. TRUST. [2215–2289.]
IX. AGENCY. [2295–2389.]
X. PARTNERSHIP. [2395–2520.]
XI. INSURANCE. [2527–2766.]
XII. INDEMNITY. [2772–2781.]
XIII. GUARANTY. [2787–2866.]
XIV. LIEN. [2872–3080.]
XV. NEGOTIABLE INSTRUMENTS. [3086–3262.]
XVI. GENERAL PROVISIONS. [3268.]

TITLE I.

SALE.

CHAPTER I. GENERAL PROVISIONS. [1721–1741.]
II. RIGHTS AND OBLIGATIONS OF THE SELLER. [1748–1778.]
III. RIGHTS AND OBLIGATIONS OF THE BUYER. [1784–1786.]
IV. SALE BY AUCTION. [1792–1798.]

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE I. SALE. [1721–1722.]
II. AGREEMENTS FOR SALE. [1726–1734.]
III. FORM OF THE CONTRACT. [1739–1741.]

ARTICLE I.

SALE.

Section 1721. Sale defined.
1722. Subject of sale.

Sale defined.

SEC. 1721. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

Subject of sale.

SEC. 1722. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.

AGREEMENTS FOR SALE.

Section 1726. Agreement for sale.
1727. Agreement to sell defined.
1728. Agreement to buy defined.
1729. Agreement to sell and buy defined.
1730. What may be the subject of an agreement for sale.
1731. Agreement to sell real property.
1733. Usual common law covenants required by such contracts, when.
1734. Form of such covenants.

Agreement for sale.

SEC. 1726. An agreement for sale is either:

1. An agreement to sell;
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

Agreement to sell defined.

SEC. 1727. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

Agreement to buy defined.

SEC. 1728. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

Agreement to sell and buy defined.

SEC. 1729. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

What may be the subject of an agreement for sale.

SEC. 1730. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

Agreement to sell real property, effect of.

SEC. 1731. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

SEC. 1732. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Stats. 1873–74, 243), the above section was repealed, and for that reason the same has been here omitted.

Usual common law covenants required by such contracts, when.

SEC. 1733. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances."

Form of such covenants.

SEC. 1734. The covenants mentioned in the last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

ARTICLE III.

REQUISITES OF CERTAIN CONTRACTS.

Section 1739. Contract for sale of personal property.
1740. Contract to manufacture.
1741. Contract for sale of real property.
1742. Same; what is sufficient part performance.

Contract for sale of personal property.

SEC. 1739. No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless:

1. The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

2. The buyer accepts and receives part of the thing sold, or

when it consists of a thing in action, part of the evidence thereof, or some of them; or,

3. The buyer at the time of sale pays a part of the price.

Contract to manufacture.

SEC. 1740. An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section.

Contract for sale of real property.

SEC. 1741. No agreement for the sale of real property, or of an interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

Same; what is sufficient part performance.

SEC. 1742. The mere payment of a part or the whole of the purchase money is not sufficient part performance to authorize the specific enforcement of an oral agreement to convey land. It must be accompanied by a change of possession in the land, or an expenditure of money upon it on the faith of the oral agreement, and where the failure to perform by the vendor would work a gross fraud upon the vendee.

COMMISSIONERS' NOTE: The above section is new, and is proposed in accordance with the opinions of the supreme court of this state in the cases of *Forrester* vs. *Flores*, 64 Cal. 24; *Salfield* vs. *Sutter Co. L. I. & R. Co.*, 94 Cal. 549; *Fulton* vs. *Jansen*, 99 Cal. 587.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE I. RIGHTS AND DUTIES BEFORE DELIVERY. [1748–1749.]
II. DELIVERY. [1753–1758.]
III. WARRANTY. [1763–1778.]

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

Section 1748. When seller must act as depositary.
1749. When seller may resell or enforce lien.

When seller must act as depositary.

SEC. 1748. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the

property, without charge, until the buyer has had a reasonable opportunity to remove it.

When seller may resell or enforce lien.

SEC. 1749. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale or may enforce his lien for the price, in the manner prescribed by the title on liens.

ARTICLE II.

DELIVERY.

Section 1753. On demand.
1754. Where made.
1755. Expense of transportation.
1756. Notice of election as to delivery.
1757. At whose risk during transportation.
1758. Offer or demand of, must be within reasonable hours.

On demand.

SEC. 1753. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

Where made.

SEC. 1754. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

Expense of transportation.

SEC. 1755. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Notice of election, as to.

SEC. 1756. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

At whose risk during transportation.

SEC. 1757. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its

transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

Offer or demand of must be within reasonable hours.

SEC. 1758. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.

WARRANTY.

Section 1763. Warranty defined.
1764. No implied warranty in mere contract of sale.
1765. Warranty of title to personal property.
1766. Warranty on sale by sample.
1767. Warranty, when seller knows that buyer relies on his statements.
1768. Warranty on sale of merchandise not in existence.
1769. Warranty of manufacturer against latent defects.
1770. Warranty of manufacturer of article for particular purpose.
1771. When thing cannot be examined by buyer.
1772. Warranty when article bears trademark.
1773. Warranty when article bears other marks.
1774. Warranty on sale of written instrument.
1775. Warranty of provisions for domestic use.
1776. Warranty on sale of good will.
1777. Warranty upon judicial sale.
1778. Effect of general warranty.

Warranty defined.

SEC. 1763. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

No implied warranty in mere contract of sale.

SEC. 1764. Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

Warranty of title to personal property.

SEC. 1765. One who sells or agrees to sell personal property as his own, thereby warrants that he has a good and unincumbered title thereto.

Warranty on sale by sample.

SEC. 1766. One who sells or agrees to sell goods by sample, thereby warrants the quality of the bulk to be equal to that of the sample.

COMMISSIONERS' NOTE: The amendment to the above section is suggested so as to make definite and certain what must have been the meaning which the Commissioners of 1870 intended to express, viz: that the *quality* of the bulk must be equal to that of the sample. (See *Hughes* vs. *Bray*, 60 Cal. 284; 2 Benjamin on Sales, 847.)

Warranty, when seller knows that buyer relies on his statements.

SEC. 1767. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would to his knowledge destroy the buyer's inducement to buy.

Warranty on sale of merchandise not in existence.

SEC. 1768. One who agrees to sell personal property not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

COMMISSIONERS' NOTE: In the case of *Blackwood* vs. *Cutting Packing Co.*, 76 Cal. 214, the court say: "We think the word 'merchandise' is used in the above section in a large sense, and covers all kinds of personal property which is ordinarily bought and sold in the market. Whether it covers more than that need not be decided in this case." In the case referred to it was held that "future crops of fruit" are included in the meaning of the section. The Commissioners can see no reason why *all* personal property, "not then in existence," should not be included, and have therefore suggested the amendment by striking out the word "merchandise" and inserting the phrase "personal property."

Warranty of manufacturer against latent defects.

SEC. 1769. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

Warranty of manufacturer of article for particular purpose.

SEC. 1770. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

Warranty when article cannot be examined by buyer.

SEC. 1771. One who sells or agrees to sell personal property inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

COMMISSIONERS' NOTE: The amendment suggested to this section is of the same nature and for the same reasons assigned in note to section 1768, *supra*, which see.

Warranty when article bears trademark.

SEC. 1772. One who sells or agrees to sell any article to which there is affixed or attached a trademark, thereby warrants that mark to be genuine and lawfully used.

Warranty when article bears other marks.

SEC. 1773. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was, in whole or in part, produced, manufactured, or prepared, thereby warrants the truth thereof.

Warranty on sale of written instrument.

SEC. 1774. One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause.

Warranty of provisions for domestic use.

SEC. 1775. One who makes a business of selling provisions for domestic use warrants by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

Warranty on sale of good will.

SEC. 1776. One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

Warranty upon judicial sale.

SEC. 1777. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

Effect of general warranty.

SEC. 1778. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

Section 1784. When price to be paid and article removed.
1785. Right to inspect goods.
1786. Right in case of breach of warranty.

When price to be paid and article removed.

SEC. 1784. A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

Right to inspect goods.

SEC. 1785. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so.

Rights in case of breach of warranty.

SEC. 1786. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

Section 1792. Sale by auction defined.
1793. Same; when complete.
1794. Same; withdrawal of bid.
1795. Same; when made on written conditions.
1796. Same; when made without reserve; bids by seller void.
1797. By bidding entitles buyer to rescind purchase.
1798. Auctioneer's memorandum of sale binding.

Sale by auction defined.

SEC. 1792. A sale by auction is a sale by public outcry to the highest bidder on the spot.

Same; when complete.

SEC. 1793. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

Same; withdrawal of bid.

SEC. 1794. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

Same; when made on written conditions.

SEC. 1795. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

Same; when made without reserve, bids by seller void.

SEC. 1796. If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent

thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void.

By bidding, entitles buyer to rescind purchase.

SEC. 1797. The employment by a seller of any person to bid at a sale by auction, without the knowledge of the buyer, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

Auctioneer's memorandum of sale binding.

SEC. 1798. When property is sold by auction, an entry made by the auctioneer, in his sale-book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves.

TITLE II.

EXCHANGE.

Section 1804. Exchange defined.
1805. Form of contract.
1806. Parties have rights and obligations of sellers and buyers.
1807. Warranty on exchange of money.

Exchange defined.

SEC. 1804. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

Form of contract.

SEC. 1805. The provisions of section 1739 apply to all exchanges in which the value of the thing to be given by either party is two hundred dollars or more.

Parties have rights and obligations of sellers and buyers.

SEC. 1806. The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

Warranty on exchange of money.

SEC. 1807. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

DEPOSIT.

CHAPTER I. DEPOSIT IN GENERAL. [1813–1827.]
II. DEPOSIT FOR KEEPING. [1833–1872.]
III. DEPOSIT FOR EXCHANGE. [1878.]

CHAPTER I.

DEPOSIT IN GENERAL.

ARTICLE I. NATURE AND CREATION OF DEPOSIT. [1813–1818.]
II. OBLIGATIONS OF THE DEPOSITARY. [1822–1827.]

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

Section 1813. Deposit, kinds of.
1814. Voluntary deposit, how made.
1815. Involuntary deposit, how made.
1816. Same.
1817. Deposit for keeping defined.
1818. Deposit for exchange defined.

Deposit, kinds of.

SEC. 1813. A deposit may be voluntary or involuntary; and for safe-keeping or for exchange.

Voluntary deposit, how made.

SEC. 1814. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

Involuntary deposit, how made.

SEC. 1815. An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

Same.

SEC. 1816. The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so.

Deposit for keeping defined.

SEC. 1817. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

Deposit for exchange defined.

SEC. 1818. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.

OBLIGATIONS OF DEPOSITARY.

Section 1822. Depositary must deliver on demand. Exceptions.
1823. Not bound to deliver without demand.
1824. Place of delivery.
1825. Notice to owner of adverse claim.
1826. Notice to owner of thing wrongfully detained.
1827. Delivery of thing owned jointly, etc.

Depositary must deliver on demand. Exceptions.

SEC. 1822. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 1825.

Not bound to deliver without demand.

SEC. 1823. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

Place of delivery.

SEC. 1824. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

Notice to owner of adverse claim.

SEC. 1825. A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

Notice to owner of thing wrongfully detained.

SEC. 1826. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterward he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his detriment or prejudice.

Delivery of thing owned jointly, etc.

SEC. 1827. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

ARTICLE I. GENERAL PROVISIONS. [1833–1840.]
II. GRATUITOUS DEPOSIT. [1844–1847.]
III. STORAGE. [1851–1855.]
IV. INNKEEPERS. [1859–1863.]
V. FINDING. [1864–1872.]

ARTICLE I.

GENERAL PROVISIONS.

Section 1833. Depositor must indemnify depositary, to what extent.
1834. Obligation of depositary of animals.
1835. Obligations as to use of thing deposited.
1836. Liability for damage arising from wrongful use.
1837. Sale of deposit in danger of perishing.
1838. Injury to or loss of deposit.
1839. Service by depositary. Title on employment and service applies.
1840. Extent of liability for negligence.

Depositor must indemnify depositary, to what extent.

SEC. 1833. A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

Obligation of depositary of animals.

SEC. 1834. A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

Obligations as to use of thing deposited.

SEC. 1835. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

Liability for damage arising from wrongful use.

SEC. 1836. A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

Sale of deposit in danger of perishing.

SEC. 1837. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

Injury to or loss of deposit.

SEC. 1838. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur.

Service by depositary. Title on employment and service applies.

SEC. 1839. So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the title on employment and service.

Limitation of liability for negligence.

SEC. 1840. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

ARTICLE II.

GRATUITOUS DEPOSIT.

Section 1844. Gratuitous deposit defined.
1845. Involuntary deposit gratuitous.
1846. Degree of care required of gratuitous depositary.
1847. His duties cease, when.

Gratuitous deposit defined.

SEC. 1844. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

Involuntary deposit gratuitous.

SEC. 1845. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

Degree of care required of gratuitous depositary.

SEC. 1846. A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited.

His duties cease, when.

SEC. 1847. The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,

2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision two of section 1815, cannot give such notice until the emergency which gave rise to the deposit is past.

ARTICLE III.

STORAGE.

Section 1851. Deposit for hire.
1852. Degree of care required of depositary for hire.
1853. Compensation allowed in absence of agreement or usage.
1854. Termination of deposit.
1855. Same; where agreement exists.
1856. Lien of depositary for hire, how enforced.
1857. Storage property to be sold, when.
1858. Issuance of receipts for goods.
1858*a*. Issuing of receipt upon goods as security.
1858*b*. Second receipt, issuance of.
1858*c*. Removal of goods when receipt issued.
1858*d*. Receipts classed.
1858*e*. Receipts to be indorsed.
1858*f*. No delivery except on order.
1858*g*. Non-negotiable receipts, how marked.
1858*h*. Loss by fire.
1858*i*. Violation of provisions a felony.

Deposit for hire.

SEC. 1851. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

Degree of care required of depositary for hire.

SEC. 1852. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

Compensation allowed in absence of agreement and usage.

SEC. 1853. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

Termination of deposit in absence of agreement.

SEC. 1854. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice; subject, however, to the provisions of the preceding section.

COMMISSIONERS' NOTE: This section is amended by adding the condition as to the preceding section, the object being to remove all possible conflict between the two sections as to the time for which compensation shall be allowed.

Same; where agreement exists.

SEC. 1855. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

Lien of depositary for hire, how enforced.

SEC. 1856. A depositary for hire has a lien for storage charges and advances, which lien may be enforced by a sale at any time after the property may have remained on deposit for one year after default on the part of the depositor. The depositary may sell such property, or so much thereof, at auction, to the highest bidder, as will satisfy the arrears due and the expenses of sale, first having given at least twenty days' notice of the time and place of sale to the owner, if his residence or place of business be known to the depositary, either by personal service or by United States mail, postage prepaid, and if by mail the notice shall be deemed to have been given at the time of deposit in the post office; also by advertisement in a daily newspaper at least ten days, or in a weekly newspaper at least four weeks, published where such sale is to take

place; if any surplus is left after paying the arrears and expenses of sale, it must be paid to the owner at any time thereafter upon demand being made within sixty days after the sale, and in the absence of demand within said time the surplus must be paid to the treasurer of the county, or city and county, within which the sale was made, subject to the order of the owner. In the absence of an express agreement as to the time when storage charges shall be payable, the same shall, subject to the provisions of section 1853, be deemed to be payable monthly. The depositary's lien for storage charges and advances is further regulated by the title on liens. Instead of selling property stored as hereinbefore provided for, a depositary may enforce his lien by judicial sale under the direction of a competent court, in the same manner as is provided for in the case of pledges.

COMMISSIONERS' NOTE: In the section proposed to be amended there is no proper provision for a sale of the property to enforce the lien in case of default of payment of storage charges, nor is it "regulated by the title on liens," though there is in case of pledges and other cases. The proposed section as amended will correct this.

Lien of depositary, how enforced.

SEC. 1856. A depositary for hire has a lien for storage charges, which is regulated by the title on liens.

Storage property, may be sold when.

SEC. 1857. If, from any cause other than want of ordinary care and diligence on his part, a depositary for hire is unable to deliver perishable property, baggage, or luggage received by him for storage, or to collect his charges for storage due thereon, he may cause such property to be sold, in open market, to satisfy his lien for storage; *provided*, that no property except perishable property shall be sold, under the provisions of this section, upon which storage charges shall not be due and unpaid for one year at the time of such sale.

Issuance of receipt for goods.

SEC. 1858. No warehouseman, wharfinger, or other person doing a storage business, shall issue any receipt or voucher for any personal property to any person or persons purporting to be the owner or owners thereof, unless such personal property shall have been bona fide received into store by such warehouseman, wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt.

Issuing of receipt upon goods as security for money loaned.

SEC. 1858*a*. No warehouseman, wharfinger, or other person, as aforesaid, shall issue any receipt or other voucher upon any

personal property to any person or persons, as security for any money loaned, or other indebtedness, unless such personal property shall be, at the time of issuing such receipt, the property of such warehouseman, wharfinger, or other person, and shall be in store and under control at the time of issuing such receipt or voucher as aforesaid.

Second receipts not to be issued.

SEC. 1858*b*. No warehouseman, wharfinger, or other person, as aforesaid, shall issue any second receipt for any personal property while any former receipt for any such personal property, or any part thereof, shall be outstanding and uncanceled.

Removal of goods when receipt is issued.

SEC. 1858*c*. No warehouseman, wharfinger, or other person, as aforesaid, shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control, any personal property for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt or receipts, plainly indorsed thereon in ink.

Receipts classed.

SEC. 1858*d*. Warehouse receipts for property stored shall be of two classes:

1. Transferable or negotiable; and,

2. Non-transferable or non-negotiable.

Under the first of these classes, all property shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement of the party shall be deemed a valid transfer of the property represented by such receipt, and may be in blank or to the order of another. All warehouse receipts for property stored shall distinctly state on their face for what they are issued, as also the brands and distinguishing marks; and in the case of grain, the number of sacks, and number of pounds, and the kind of grain; also, the rate of storage per month or season charged for storing the same.

Receipt to be indorsed.

SEC. 1858*e*. No warehouseman, or other person or persons, giving or issuing negotiable receipts for personal property on storage, shall deliver said property, or any part thereof, without indorsing upon the back of said receipt or receipts, in ink, the amount and date of the deliveries. Nor shall he or they be allowed to make any offset, claim, or demand other than is

expressed on the face of the receipt or receipts issued for the same, when called upon to deliver said personal property.

No delivery except on order.

SEC. 1858*f*. No warehouseman, or person or persons doing a general storage business, giving or issuing non-negotiable or non-transferable receipts for any personal property on storage, shall deliver said property, or any part thereof, except upon the written order of the person or persons to whom the receipt or receipts were issued.

Non-negotiable receipts, how marked.

SEC. 1858*g*. All receipts issued by any warehouseman or other person under this act, other than negotiable, shall have printed across their face, in bold, distinct letters, in red ink, the words "non-negotiable."

Loss by fire.

SEC. 1858*h*. No warehouseman, person or persons doing a general storage business, shall be responsible for any loss or damage to property by fire while in his or their custody; *provided*, reasonable care and vigilance be exercised to protect and preserve the same.

Violation of provisions a felony.

SEC. 1858*i*. Any warehouseman, wharfinger, person or persons, who shall violate any of the provisions of sections 1858 to 1858*h*, inclusive, is guilty of felony. And all and every person aggrieved by the violation of any of the provisions of said sections may have and maintain an action against the person or persons violating any of the provisions of said sections, to recover all damages, immediate or consequent, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted under said sections or not.

COMMISSIONERS' NOTE: The foregoing sections, 1858 to 1858*i*, inclusive, are taken from an act entitled "An act in relation to warehouse and wharfinger receipts, and other matters pertaining thereto," approved April 1, 1878 (Stats. 1877–78, 949). Only such changes have been made in said statute as were deemed necessary to render it more brief and harmonious.

ARTICLE IV.

INNKEEPERS.

Section 1859. Liability that of depositary for hire. Limitations.
1860. How exempted from liability. Limitation.
1861. Lien upon baggage for charges due.
1862. Sale of unclaimed baggage for storage, etc.
1863. Statement of charges must be posted. Penalty.

Liability that of depositary for hire. Limitations.

SEC. 1859. The liability of an innkeeper, hotel-keeper, boarding and lodging-house keeper, for losses of or injuries to personal property, other than money, placed by his guests, boarders, or lodgers under his care, is that of a depositary for hire; *provided, however*, that in no case shall such liability exceed the sum of one hundred dollars for each trunk and its contents, fifty dollars for each valise or traveling bag and contents, and ten dollars for each box, bundle, or package and contents, so placed under his care, unless he shall have consented in writing with the owner thereof to assume a greater liability.

How exempted from liability. Limitation.

SEC. 1860. If an innkeeper, hotel-keeper, boarding-house or lodging-house keeper, keeps a fireproof safe, and gives notice to guest, boarder, or lodger, either personally or by putting up a printed notice in a prominent place in the office or the room occupied by the guest, boarder, or lodger, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts shall contribute thereto, for any loss of or injury to such articles, if not deposited with him to be placed therein, nor in any case more than the sum of two hundred and fifty dollars for any or all such property of any individual guest, boarder, or lodger, unless he shall have given a receipt in writing therefor to such guest, boarder, or lodger.

Lien upon baggage for charges due.

SEC. 1861. Hotel, inn, boarding-house and lodging-house keepers, shall have a lien upon the baggage and other property of value of their guests, or boarders, or lodgers, brought into such hotel, inn, or boarding or lodging-house by such guests, or boarders, or lodgers, for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging, and room rent, and such extras as are furnished at their request, with the right to the possession of such baggage, or other property of value, until all such charges are paid.

Sale of unclaimed baggage for storage, etc.

SEC. 1862. Whenever any trunk, carpet-bag, valise, box, bundle, or other baggage has heretofore come, or shall hereafter come, into the possession of the keeper of any hotel, inn, boarding or lodging house, as such, and has remained, or shall remain, unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale may retain the charges for storage, if any, and the expense of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village, or place in which said hotel, inn, boarding or lodging house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet-bag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of said keeper, and the time and place of sale; and the expenses incurred in advertising shall be a lien upon such trunk, carpet-bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece or property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which said sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county.

Statement of charges must be posted. Penalty.

SEC. 1863. Every keeper of a hotel, inn, boarding, or lodging house, shall post, in a conspicuous place, in the office, or public room, and in every bedroom of said hotel, boarding-house, inn, or lodging-house, a printed copy of this section, and a statement of charge, or rate of charges, by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding, or lodging-house. For any violation of this, or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to.

ARTICLE V.

FINDING.

Section 1864. Finder of thing is depositary for hire.
1865. Must notify owner, if known.
1866. May require proof of ownership before delivery.
1867. Entitled to compensation and reward.
1868. May relieve himself from liability by storing thing found.
1869. When he may sell the thing found.
1870. How sale must be made.
1871. Owner may surrender thing to finder.
1872. This article does not apply to thing abandoned.

Finder of thing is depositary for hire.

SEC. 1864. One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

Must notify owner, if known.

SEC. 1865. If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

May require proof of ownership before delivery.

SEC. 1866. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

Entitled to compensation and reward.

SEC. 1867. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

May relieve himself from liability by storing thing found.

SEC. 1868. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense.

When he may sell the thing found.

SEC. 1869. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or being found, refuses, upon demand, to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,

2. When the lawful charges of the finder amount to two thirds of its value.

How sale must be made.

SEC. 1870. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

Owner may surrender thing to finder.

SEC. 1871. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

This article does not apply to thing abandoned.

SEC. 1872. The provisions of this article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

Section 1878. Relations of the parties.

Relations of the parties.

SEC. 1878. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

LOAN.

CHAPTER I. LOAN FOR USE. [1884–1896.]
II. LOAN FOR EXCHANGE. [1902–1906.]
III. LOAN OF MONEY. [1912–1920.]

CHAPTER I.

LOAN FOR USE.

Section 1884. Loan for use defined.
1885. Lender retains title to property and increase.
1886. Great care required of borrower.
1887. Same; of living animal.
1888. Degree of skill required.
1889. Borrower to repair what injuries.

Section 1890. Use of thing lent.
1891. Relending forbidden.
1892. Borrower to bear what expenses.
1893. Lender liable for what defects.
1894. Lender may require return of thing lent. Must compensate borrower, when.
1895. When thing lent returnable.
1896. Place of return.

Loan for use defined.

SEC. 1884. A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time without reward for its use.

Lender retains title to property and increase.

SEC. 1885. A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

Great care required of borrower.

SEC. 1886. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

Same, of living animal.

SEC. 1887. One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.

Degree of skill required.

SEC. 1888. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

Borrower to repair what injuries.

SEC. 1889. A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.

Use of thing lent.

SEC. 1890. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

Relending forbidden.

SEC. 1891. The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

Borrower to bear what expenses.

SEC. 1892. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily

incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

Lender liable for what defects.

SEC. 1893. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of the lending, and concealed from the borrower.

Lender may require return of thing lent. Must compensate borrower, when.

SEC. 1894. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

When thing lent returnable.

SEC. 1895. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases, it need not be returned until demanded.

Place of return.

SEC. 1896. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

Section 1902. Loan for exchange defined.
1903. Chapter applies to loan for use or exchange at borrower's option.
1904. Borrower acquires title to property lent.
1905. Contract cannot be modified by lender.
1906. Certain sections applicable.

Loan for exchange defined.

SEC. 1902. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to

return to the lender a similar thing at a future time, without reward for its use.

Chapter applies to loan for use or exchange at borrower's option.

SEC. 1903. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

Borrower acquires title to property lent.

SEC. 1904. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

Contract cannot be modified by lender.

SEC. 1905. A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

Certain sections applicable.

SEC. 1906. Sections 1893, 1895, and 1896 apply to a loan for exchange.

CHAPTER III.

LOAN OF MONEY.

Section 1912. Loan of money defined.
1913. Loan repaid in current money unless contract to contrary.
1914. Loan presumed to be on interest.
1915. Interest defined.
1916. Rate, when deemed annual.
1917. Legal interest defined.
1918. Any rate of interest agreed upon in writing is legal.
1919. Compound interest may be agreed upon.
1920. Interest on judgment.

COMMISSIONERS' NOTE: The Commissioners of 1870 prefaced this chapter with the following note: "Originally, no interest was allowed upon a loan of money, but with the progress of business it became necessary; and the transaction entered into, although in strictness a hiring, is universally known as a loan. This use of the word having obtained so long, it would be idle to attempt to change it."

Loan of money defined.

SEC. 1912. A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on loan for use.

Loan repaid in current money unless contract to contrary.

SEC. 1913. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such

money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

Loan presumed to be on interest.

SEC. 1914. Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

Interest defined.

SEC. 1915. Interest is the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money.

Rate, when deemed annual.

SEC. 1916. When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

Legal interest defined.

SEC. 1917. Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of seven per cent per annum, after they become due on any instrument of writing, except a judgment, and on moneys lent or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period less than a year, three hundred and sixty days are deemed to constitute a year.

Any rate of interest agreed upon in writing is legal.

SEC. 1918. Parties may agree in writing for the payment of any rate of interest, and it shall be allowed, according to the terms of the agreement, until the entry of judgment.

Compound interest may be agreed upon.

SEC. 1919. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Interest on judgments.

SEC. 1920. Interest is payable on judgments recovered in the courts of this state, at the rate of seven per cent per annum, and no greater rate, but such interest must not be compounded in any manner or form.

TITLE V.

HIRING.

CHAPTER I. HIRING IN GENERAL. [1925–1935.]
II. HIRING OF REAL PROPERTY. [1941–1950.]
III. HIRING OF PERSONAL PROPERTY. [1955–1959.]

CHAPTER I.

HIRING IN GENERAL.

Section 1925. Hiring defined.
1926. Products belong to hirer.
1927. Quiet possession implied.
1928. Hirer must use ordinary care.
1929. Must repair what injuries.
1930. Must use thing for purpose for which it was let.
1931. Letter may terminate the hiring, when.
1932. Hirer may terminate the hiring, when.
1933. Hiring terminates, how.
1934. Same, by death of party, when.
1935. Apportionment of hire.

Hiring defined.

SEC. 1925. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

Products belong to hirer.

SEC. 1926. The products of a thing hired, during the hiring, belong to the hirer.

Quiet possession implied.

SEC. 1927. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

Hirer must use ordinary care.

SEC. 1928. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

Must repair what injuries.

SEC. 1929. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

Must use thing for purpose for which it was let.

SEC. 1930. When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use in all events, or may treat the contract as thereby rescinded.

Letter may terminate hiring, when.

SEC. 1931. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

Hirer may terminate hiring, when.

SEC. 1932. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

Hiring terminates, how.

SEC. 1933. The hiring of a thing terminates:

1. At the end of the term agreed upon;

2. By the mutual consent of the parties;

3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired.

Same; by death of party, when.

SEC. 1934. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

Apportionment of hire.

SEC. 1935. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

Section 1941. Lessor must make and keep dwelling tenantable.
1942. When lessee may make repairs, etc.
1943. Term of hiring other than dwellings when no limit fixed.
1944. Term of hiring of lodgings or dwellings when no limit is fixed.
1945. Renewal of lease by lessee's continued possession.
1946. Lease renewed unless notice of termination given.
1947. Rent, when payable.
1948. Attornment of tenant to stranger, when void.
1949. Tenant must deliver notice served on him.
1950. Letting parts of rooms for dwelling forbidden.

Lessor must make and keep dwelling tenantable.

SEC. 1941. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable, except such as are mentioned in section 1929.

When lessee may make repairs, etc.

SEC. 1942. If within a reasonable time after notice to lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the cost of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

Term of hiring other than dwellings when no limit fixed.

SEC. 1943. A hiring of real property other than lodgings and dwelling-houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

Term of hiring lodgings or dwellings when no limit is fixed.

SEC. 1944. A hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

Renewal of lease by lessee's continued possession.

SEC. 1945. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts

rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

Lease renewed unless notice of termination given.

SEC. 1946. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

Rent, when payable.

SEC. 1947. When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

Attornment of tenant to stranger, when void.

SEC. 1948. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

Tenant must deliver notice served on him to landlord.

SEC. 1949. Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing.

Letting parts of rooms for dwelling forbidden.

SEC. 1950. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

Section 1955. Obligations of letter of personal property.
1956. Ordinary expenses.
1957. Extraordinary expenses.
1958. Return of thing hired, time and place of.
1959. Charter party defined.
1960. Contract of affreightment defined.

Obligations of letter of personal property.

SEC. 1955. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer, and not the natural result of its use.

Ordinary expenses, how borne.

SEC. 1956. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

Extraordinary expenses, how borne.

SEC. 1957. If a letter fails to fulfill his obligations, as prescribed by section 1955, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

Return of thing hired, time and place of.

SEC. 1958. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

Charter party defined.

SEC. 1959. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer.

Contract of affreightment defined.

SEC. 1960. Where the owner of the vessel lets only the carrying capacity of his ship and not the ship itself, and retains

the possession, command, and navigation of the vessel, such contract is considered a contract of affreightment, and the owner, or his agent, his master, may hold possession of the freight until the lien for freightage and charge has been extinguished.

COMMISSIONERS' NOTE: The above section is new, and is taken from the case of *Hayes* vs. *Campbell*, 55 Cal. 421.

TITLE VI.

SERVICE.

CHAPTER I. SERVICE WITH EMPLOYMENT. [1965–2003.]
II. PARTICULAR EMPLOYMENTS. [2009–2072.]
III. SERVICE WITHOUT EMPLOYMENT. [2078–2079.]

CHAPTER I.

SERVICE WITH EMPLOYMENT.

ARTICLE I. DEFINITION OF EMPLOYMENT. [1965.]
II. OBLIGATIONS OF THE EMPLOYER. [1969–1971.]
III. OBLIGATIONS OF THE EMPLOYÉ. [1975–1992.]
IV. TERMINATION OF EMPLOYMENT [1996–2003.]

ARTICLE I.

DEFINITION OF EMPLOYMENT.

Section 1965. Employment defined.

Employment defined.

SEC. 1965. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employé, to do something for the benefit of the employer, or of a third person.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

Section 1969. When employer must indemnify employé.
1970. When not.
1971. Employer to indemnify for his own negligence.

When employer must indemnify employé.

SEC. 1969. An employer must indemnify his employé, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the

employer, even though unlawful, unless the employé, at the time of obeying such instructions, believed them to be unlawful.

When not.

SEC. 1970. An employer is not bound to indemnify his employé for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employé.

Must indemnify for his own negligence.

SEC. 1971. An employer must in all cases indemnify his employé for losses caused by the former's want of ordinary care.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYÉ.

Section 1975. Of gratuitous employé.
1976. Same.
1977. Same.
1978. Of employé for reward.
1979. Of employé for his own benefit.
1980. Limit of contract for personal service.
1981. Employé must obey employer.
1982. Employé must conform to usage.
1983. Degree of skill required.
1984. Must use what skill he has.
1985. What belongs to employer.
1986. Employé must account on demand.
1987. Not bound to deliver without demand.
1988. Must give preference to employer's business.
1989. Responsibility for substitute.
1990. Responsibility for culpable negligence.
1991. Obligations of surviving employé.
1992. Of confidential employment, defined by title on trusts.

Of gratuitous employé.

SEC. 1975. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

Same.

SEC. 1976. One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

Same.

SEC. 1977. A gratuitous employé, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

Of employé for reward.

SEC. 1978. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

Of employé for his own benefit.

SEC. 1979. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

Limit of contract for personal service.

SEC. 1980. A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on master and servant, cannot be enforced as against the employé beyond the term of two years from the commencement of service under it; but if the employé voluntarily continues his service under it beyond that time the contract may be referred to as affording a presumptive measure of the compensation.

Employé must obey employer.

SEC. 1981. An employé must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employé.

Employé must conform to usage.

SEC. 1982. An employé must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

Degree of skill required.

SEC. 1983. An employé is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

Must use what skill he has.

SEC. 1984. An employé is always bound to use what skill he possesses, so far as the same is required for the service specified.

What belongs to employer.

SEC. 1985. Everything which an employé acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

Employé must account on demand.

SEC. 1986. An employé must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

Not bound to deliver without demand.

SEC. 1987. An employé who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employé himself.

Must give preference to employer's business.

SEC. 1988. An employé who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference.

Responsibility for substitute.

SEC. 1989. An employé who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

Responsibility for culpable negligence.

SEC. 1990. An employé who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter: and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

Obligations of surviving employé.

SEC. 1991. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

Of confidential employments defined by title on trusts.

SEC. 1992. The obligations peculiar to confidential employments are defined in the title on trusts.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

Section 1996. Employment. How terminated.
1997. Same.
1998. Continuance of service in certain cases.
1999. Termination at will, on notice.
2000. Termination by employer for fault of employé.
2001. Termination by employé for fault of employer.
2002. Compensation of employé dismissed for cause.
2003. Compensation of employé leaving for cause.

Employment. How terminated.

SEC. 1996. Every employment in which the power of the employé is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

Same.

SEC. 1997. Every employment is terminated:

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employé; or,
4. By his legal incapacity to act as such.

Continuance of service in certain cases.

SEC. 1998. An employé, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employé for such service according to the terms of the contract of employment.

Termination at will on notice.

SEC. 1999. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title.

Termination by employer for fault of employé.

SEC. 2000. An employment, even for a specified term, may be terminated at any time by the employer, in case of any

willful breach of duty by the employé in the course of his employment, or in case of his habitual neglect of his duty, or continued incapacity to perform it.

Termination by employé for fault of employer.

SEC. 2001. An employment, even for a specified term, may be terminated by the employé at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employé.

Compensation of employé dismissed for cause.

SEC. 2002. An employé, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

Compensation of employé leaving for cause.

SEC. 2003. An employé who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I. MASTER AND SERVANT. [2009-2015].
II. AGENTS. [2019-2022].
III. FACTORS. [2026-2030].
IV. SHIPMASTERS. [2034-2044].
V. MATES AND SEAMEN. [2048-2066].
VI. SHIP'S MANAGERS. [2070-2072].

ARTICLE I.

MASTER AND SERVANT.

Section 2009. Master and sevant defined.
2010. Term of hiring.
2011. Same; compensation, when due.
2012. Renewal of hiring.
2013. Time of service.
2014. Servant must deliver receipts to master without demand.
2015. When servant may be discharged.

Master and servant defined.

SEC. 2009. A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

Term of hiring.

SEC. 2010. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

Same; compensation, when due.

SEC. 2011. In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

Renewal of hiring.

SEC. 2012. Where after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

Time of service.

SEC. 2013. The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

Servant must deliver receipts to master without demand.

SEC. 2014. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person.

When servant may be discharged.

SEC. 2015. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of a misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.

AGENTS.

Section 2019. Agent must conform to his authority.
2020. Must keep his principal informed.
2021. Collecting agent must act promptly.
2022. Responsibility of sub-agent.

Agent must conform to his authority.

SEC. 2019. An agent must not exceed the limits of his actual authority, as defined by the title on agency.

Must keep his principal informed.

SEC. 2020. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

Collection agent must act promptly.

SEC. 2021. An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

Responsibility of sub-agent.

SEC. 2022. A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.

FACTORS.

Section 2026. Factor defined.
2027. Factor must obey instructions of principal.
2028. Sales on credit by factor.
2029. Liability of factor under guaranty commission.
2030. Factor cannot relieve himself from liability.

Factor defined.

SEC. 2026. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

Factor must obey instructions of principal.

SEC. 2027. A factor must obey the instructions of his principal to the same extent as any other employé, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable

notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

Sales on credit by factor.

SEC. 2028. A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the term of credit, may not extend it.

Liability of factor under guaranty commission.

SEC. 2029. A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

Factor cannot relieve himself from liability.

SEC. 2030. A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without consent of his principal.

ARTICLE IV.

SHIPMASTERS.

Section 2034. Appointment of.
2035. When must be on board.
2036. When must take pilot.
2037. Power of master over seamen.
2038. Power of master over passengers.
2039. May compel surrender of private stores, when.
2040. When may abandon ship.
2041. Duties on abandonment.
2042. When must not trade on his own account.
2043. Degree of care required.
2044. Authority and liability of as agent.

Appointment of.

SEC. 2034. The master of a ship is appointed by the owner, and holds during his pleasure.

When must be on board.

SEC. 2035. The master of a ship is bound to be always on board when entering or leaving a port, harbor, or river.

When must take pilot.

SEC. 2036. On entering or leaving a port, harbor, or river, the master of a ship must take a pilot, if one offers himself; and while the pilot is on board, the navigation of the ship devolves on him.

Power of, over seamen.

SEC. 2037. The master of a ship may enforce the obedience of the mate and seamen to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by acts of congress, being responsible for the abuse of his power.

Power of, over passengers.

SEC. 2038. The master of a ship may confine any person on board, during a voyage, for willful disobedience to his lawful commands.

May compel surrender of private stores, when.

SEC. 2039. If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value, or giving security therefor.

When may abandon ship.

SEC. 2040. The master of a ship must not abandon it during the voyage, without the advice of the other officers.

Duties on abandonment.

SEC. 2041. The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost, from causes beyond his control, he is exonerated from liability.

When must not trade on his own account.

SEC. 2042. The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

Degree of care required.

SEC. 2043. The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

Authority and liability of, as agent.

SEC. 2044. The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the title on agency.

ARTICLE V.

MATES AND SEAMEN.

Section 2048. Mate defined.
2049. Seamen defined.
2050. Mate and seamen how and by whom engaged and discharged.
2051. Mate or seamen not bound to ship in unseaworthy vessel.
2052. Seamen not to lose wages or lien by agreement.
2053. Not to impair rights by special agreement without fair compensation.
2054. Wages depend on freightage.
2055. When wages, etc., begin.
2056. Wages, where voyage is broken up before departure.
2057. May be recovered on wrongful discharge.
2058. When lost by wreck.
2059. Certificate of officer presumptive evidence of what.
2060. Disabled mate or seamen, wages, etc., of.
2061. Same; maintenance of.
2062. Death of mate or seamen, who entitled to wages.
2063. Desertion or justifiable discharge forfeits wages.
2064. Mate or seamen cannot ship goods.
2066. Law governing officers and seamen.

Mate defined.

SEC. 2048. The mate of a ship is the officer next in rank to the master, and in case of the master's disability, he must take his place. By so doing he does not lose any of his rights as mate.

Seamen defined.

SEC. 2049. All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen within the provisions of this code.

Mate and seamen, how and by whom engaged and discharged.

SEC. 2050. The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for willful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.

Mate or seamen not bound to ship in unseaworthy vessel.

SEC. 2051. A mate or seaman is not bound to go to sea in a vessel that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

Seamen not to lose wages or l en by agreement.

SEC. 2052. A seaman connot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been

entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of the ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

Not to impair rights by special agreement without fair compensation.

SEC. 2053. No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

Wages depend on freightage.

SEC. 2054. Except as hereinafter provided, the wages of seamen are due when, and so far only as, freightage is earned, unless, the loss of freightage is owing to the fault of the owner or master.

When wages etc., begin.

SEC. 2055. The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

Wages, where voyage is broken up before departure.

SEC. 2056. Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

May be recovered on wrongful discharge.

SEC. 2057. When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

When not lost by wreck.

SEC. 2058. In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save ship, cargo, and stores.

Certificate of officer presumptive evidence of what.

SEC. 2059. A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo, and stores, is presumptive evidence of the fact.

Disabled mate or seaman, wages, etc., of.

SEC. 2060. Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages, notwithstanding; but in case of a capture, a ratable deduction for salvage is to be made.

Same; maintenance of, during voyage.

SEC. 2061. If a mate or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

Death of mate or seaman, who entitled to wages.

SEC. 2062. If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

Desertion or justifiable discharge forfeits wages.

SEC. 2063. Desertion of the ship without cause, or a justifiable discharge by the master during the voyage, for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

Mate or seaman cannot ship goods.

SEC. 2064. A mate or seaman may not, under any pretext, ship goods on his own account without permission from the master.

SEC. 2065. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 247), the preceding section was repealed, and for that reason the same is here omitted.

Law governing officers and seamen.

SEC. 2066. The shipment of officers and seamen, and their rights and duties, are further regulated by acts of congress.

ARTICLE VI.

SHIP'S MANAGERS.

Section 2070. Manager defined.
2071. Duties of.
2072. Managing owner no right to compensation.

Manager defined.

SEC. 2070. The general agent for the owners, in respect to the care of a ship and freight, is called the manager. If he is a part owner, he is also called the managing owner.

Duties of.

SEC. 2071. Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of a ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate, and crew, and supplies of provisions and stores.

Managing owner no right to compensation.

SEC. 2072. A managing owner is presumed to have no right to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

Section 2078. Voluntary interference with property.
2079. Salvage defined. Lien for, and who entitled to.

Voluntary interference with property.

SEC. 2078. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

Salvage defined. Lien for, and who entitled to.

SEC. 2079. Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances, or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the title on liens; but no claim for salvage, as such, can accrue against any vessel, or her freight or cargo, in favor of the owners, officers, or crew of another vessel belonging to the same owners; but the actual cost at the time of the services rendered by one such vessel to another, when in distress, are payable through a general average contribution on the property saved.

TITLE VII.

CARRIAGE.

CHAPTER I. CARRIAGE IN GENERAL. [2085–2090.]
II. CARRIAGE OF PERSONS. [2100–2104.]
III. CARRIAGE OF PROPERTY. [2110–2155.]
IV. CARRIAGE OF MESSAGES. [2161.]
V. COMMON CARRIERS. [2168–2209.]

CHAPTER I.

CARRIAGE IN GENERAL.

Section 2085. Contract of, defined.
2086. Different kinds of.
2087. Marine and inland carriers defined.
2088. Carriers by sea, governed by acts of congress.
2089. Obligations of gratuitous carriers.
2090. Obligations of gratuitous carrier who has begun to carry.

Contract of, defined.

SEC. 2085. The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

Different kinds of.

SEC. 2086. Carriage is either:

1. Inland; or,

2. Marine.

Marine and inland carriers defined.

SEC. 2087. Carriers upon the ocean and upon arms of the sea are marine carriers. All others are inland carriers.

Carriers by sea, governed by acts of congress.

SEC. 2088. Rights and duties peculiar to carriers by sea are defined by acts of congress.

Obligations of gratuitous carriers.

SEC. 2089. Carriers without reward are subject to the same rules as employés without reward, except so far as is otherwise provided by this title.

Obligations of gratuitous carrier who has begun to carry.

SEC. 2090. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

ARTICLE I. GRATUITOUS CARRIAGE. [2096.]
ARTICLE II. CARRIAGE FOR REWARD. [2100–2104.]

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

Section 2096. Degree of care required.

Degree of care required.

SEC. 2096. A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.

CARRIAGE FOR REWARD.

Section 2100. Duties of carrier, generally.
2101. Same; as to vehicles.
2102. Same.
2103. Same; as to treatment of passengers.
2104. Same; as to rate of speed, delays, and route.

Duties of carrier, generally.

SEC. 2100. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

Same; as to vehicles.

SEC. 2101. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

Same.

SEC. 2102. A carrier of persons for reward must not overcrowd or overload his vehicle.

Same; as to treatment of passengers.

SEC. 2103. A carrier of persons for reward must give to passengers all such accommodations as are reasonable and usual, and must treat them with civility, and give them a reasonable degree of attention.

Same; as to rate of speed, delays, and route.

SEC. 2104. A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

ARTICLE I. GENERAL DEFINITIONS. [2110.]
II. OBLIGATIONS OF THE CARRIER. [2114-2122.]
III. BILL OF LADING. [2126-2132.]
IV. FREIGHTAGE. [2136-2144.]
V. GENERAL AVERAGE. [2148-2155.]

ARTICLE I.

GENERAL DEFINITIONS.

Section 2110. Freight, freightage, consignor, and consignee, defined.

Freight, freightage, consignor, and consignee, defined.

SEC. 2110. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

Section 2114. Degree of care required of carriers for and without reward.
2115. Must obey directions, to what extent.
2116. Conflict of orders.
2117. Marine carriers, duties as to stowage, deviation, etc.
2118. Delivery of freight.
2119. Place of delivery.
2120. Obligations of carrier when freight not delivered to consignee.
2121. How carrier may terminate his liability.

Degree of care required of carriers for and without reward.

SEC. 2114. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

Must obey directions, to what extent.

SEC. 2115. A carrier must comply with the directions of the consignor or consignee to the same extent that an employé is bound to comply with those of his employer.

Conflict of orders.

SEC. 2116. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the

carrier to receive orders from the consignee inconsistent with his own.

Marine carriers, duty as to stowage, deviation, etc.

SEC. 2117. A marine carrier must not stow freight upon the deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

Delivery of freight.

SEC. 2118. A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

Place of delivery.

SEC. 2119. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried upon a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed;

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or, if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

Obligations of carrier when freight not delivered to consignee.

SEC. 2120. If, for any reason, a carrier does not deliver freight to the consignee or his agent, personally, he must give notice to the consignee of its arrival, and keep the same in safety upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office.

How carrier may terminate his liability.

SEC. 2121. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

SEC. 2122. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 248), the preceding section was repealed, and for that reason the same has been here omitted.

ARTICLE III.

BILL OF LADING.

Section 2126. Bill of lading defined.
2127. Bill of lading negotiable.
2128. Same.
2129. Effect of bill of lading on rights, etc., of carrier.
2130. Bills of lading to be given to consignor.
2131. Carrier exonerated by delivery according to bill of lading.
2132. Carrier may demand surrender of bill of lading before delivery.

Bill of lading defined.

SEC. 2126. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

Bill of lading negotiable.

SEC. 2127. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

Same.

SEC. 2128. When a bill of lading is made to "bearer," or in equivalent terms, a simple transfer thereof, by delivery, conveys the same title as an indorsement.

Effect of bill of lading on rights, etc., of carrier.

SEC. 2129. A bill of lading does not alter the rights or obligations of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith.

Bills of lading to be given to consignor.

SEC. 2130. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damage thereby occasioned.

Carrier exonerated by delivery according to bill of lading.

SEC. 2131. A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

Carrier may demand surrender of bill of lading before delivery.

SEC. 2132. When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

ARTICLE IV.

FREIGHTAGE.

Section 2136. When freightage is to be paid.
2137. Consignor, when liable for freightage.
2138. Consignee, when liable.
2139. Natural increase of freight.
2140. Apportionment by contract.
2141. Same.
2142. Apportionment according to distance.
2143. Freight carried further than agreed, etc.
2144. Lien of carrier for freightage, how enforced.

When freightage is to be paid.

SEC. 2136. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

Consignor, when liable for freightage.

SEC. 2137. The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

Consignee, when liable.

SEC. 2138. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

Natural increase of freight.

SEC. 2139. No freightage can be charged upon the natural increase of freight.

Apportionment by contract.

SEC. 2140. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the

carrier is entitled to payment, according to the apportionment, for so much as he delivers.

Same.

SEC. 2141. If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

Apportionment according to distance.

SEC. 2142. If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

Freight carried further than agreed, etc.

SEC. 2143. If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

Lien of carrier for freightage, how enforced.

SEC. 2144. A carrier has a lien for freightage which may be enforced as provided by section 1856, which is hereby made applicable hereto.

COMMISSIONERS' NOTE: Under section 2144 at present no method is provided whereby the lien can be enforced. The amendment makes provision therefor.

ARTICLE V.

GENERAL AVERAGE.

Section 2148. Jettison and general average defined.
2149. Order of jettison.
2150. By whom made.
2151. Loss, how borne.
2152. General average loss, how adjusted.
2153. Values, how ascertained.
2154. Things stowed on deck.
2155. Application of the foregoing rules.

Jettison and general average defined.

SEC. 2148. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all the cargo or

appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

Order of jettison.

SEC. 2149. A jettison must begin with the most bulky and least valuable articles, so far as possible.

By whom made.

SEC. 2150. A jettison can be made only by authority of the master of the ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

Loss, how borne.

SEC. 2151. The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage, and cargo for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed.

General average loss, how adjusted.

SEC. 2152. The proportions in which a general average loss is to be borne must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere.

Values, how ascertained.

SEC. 2153. In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

Things stowed on deck.

SEC. 2154. The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

Application of the foregoing rules.

SEC. 2155. The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of prop-

erty on a ship, or expense necessarily incurred for the preservation of the ship and cargo from extraordinary perils.

CHAPTER IV.

CARRIAGE OF MESSAGES.

Section 2161. Obligations of carrier of messages.
2162. Degree of care and diligence required.

Obligations of carrier of messages.

SEC. 2161. A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier.

COMMISSIONERS' NOTE: The amendment to this section consists in adding the word "telephone" after the word "telegraph" where it occurs. The section was intended to include all carriers of messages for reward, hence the telephone, which has been brought into use since the adoption of the section, has been here included.

Degree of care and diligence required.

SEC. 2162. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

CHAPTER V.

COMMON CARRIERS.

ARTICLE I. COMMON CARRIERS IN GENERAL. [2168–2177.]
II. COMMON CARRIERS OF PERSONS. [2180–2191.]
III. COMMON CARRIERS OF PROPERTY. [2194–2204.]
IV. COMMON CARRIERS OF MESSAGES. [2207–2209.]

ARTICLE I.

COMMON CARRIERS IN GENERAL.

Section 2168. Common carrier defined.
2169. Obligation to accept freight.
2170. Obligation not to give preference.
2171. What preferences he must give.
2172. Starting.

Section 2173. Compensation.
2174. Obligations of carrier altered only by agreement.
2175. Certain agreements void.
2176. Effect of written contract.
2177. When not liable for loss.

Common carrier defined.

SEC. 2168. Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry.

COMMISSIONERS' NOTE: See note to section 2161.

Obligation to accept freight.

SEC. 2169. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

Obligation not to give preference.

SEC. 2170. A common carrier must not give preference, in time, price, or otherwise, to one person over another.

What preferences he must give.

SEC. 2171. A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this state.

Starting.

SEC. 2172. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this state, shall establish a schedule time for the starting of trains or vessels, from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessels at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the district attorney of the county in the name of the people, and paid into the common school fund of said county.

COMMISSIONERS' NOTE: Section 2172 should be amended by striking out said section and inserting all after and including the word "every," where it first occurs, in section 2170, in lieu of section 2172, where it properly belongs, and where the legislature, evidently by mistake, failed to place it.

Compensation.

SEC. 2173. A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid

in advance. If payment thereof is refused, he may refuse to carry.

Obligations of carrier altered only by agreement.

SEC. 2174. The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

Certain agreements void.

SEC. 2175. A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

Effect of written contract.

SEC. 2176. A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated; and also to the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes, is lost or injured, when the value of such property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same.

When not liable for loss.

SEC. 2177. A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents.

ARTICLE II.

COMMON CARRIERS OF PERSONS.

Section 2180. Obligation to carry baggage.
2181. Baggage defined.
2182. Liability for baggage.
2183. Baggage, how carried and delivered.
2184. Obligation to provide vehicles.
2185. Seats for passengers.
2186. Regulations for conduct of business.
2187. Fare, when payable.
2188. Ejection of passengers.
2189. Passenger who has not paid fare, penalty.
2190. Fare not payable after ejection.
2191. Carrier's lien.

Obligation to carry baggage.

SEC. 2180. A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over one hundred pounds to a passenger; *provided*, that if such carrier be a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage.

Baggage defined.

SEC. 2181. Baggage may consist of whatever the passenger takes with him for his personal use and convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities, or to the ultimate purpose of the journey. No crate, cover, or other protection shall be required for any bicycle carried as baggage, but no passenger shall be entitled to carry as baggage more than one bicycle.

Liability for baggage.

SEC. 2182. The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

Baggage, how carried and delivered.

SEC. 2183. A common carrier must deliver every passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where baggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

Obligation to provide vehicles.

SEC. 2184. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

Seats for passengers.

SEC. 2185. A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by

receiving and carrying more passengers than its rated capacity allows.

Regulations for conduct of business.

SEC. 2186. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

Fare, when payable.

SEC. 2187. A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

Ejection of passengers.

SEC. 2188. A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling house.

Passenger who has not paid fare, penalty.

SEC. 2189. A passenger upon a railroad train who has not paid his fare before entering the train, if he has been afforded an opportunity to do so, must, upon demand, pay ten per cent. in addition to the regular rate.

Fare not payable after ejection.

SEC. 2190. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

Carrier's lien.

SEC. 2191. A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on liens.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

Section 2194. Liability of inland carriers for loss.
2195. When exemptions do not apply.
2196. Liability for delay.
2197. Liability of marine carriers.
2198. Same.
2199. Perils of sea defined.
2200. Consignor of valuables to declare their nature.
2201. Delivery of freight beyond usual route.
2202. Same; proof to be given in case of loss.
2203. Carrier's services, other than carriage and delivery.
2204 Sale of perishable property for freight.

Liability of inland carriers for loss.

SEC. 2194. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 2118 to 2121, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, or weakness, or a spontaneous action, of the property itself;

2. The act of a public enemy of the United States, or of this state;

3. The act of the law; or,

4. Any irresistible superhuman cause.

When exemptions do not apply.

SEC. 2195. A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

Liability for delay.

SEC. 2196. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

Liability of marine carriers.

SEC. 2197. A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

Same.

SEC. 2198. The liability of a common carrier by sea is further regulated by acts of congress.

Perils of sea defined.

SEC. 2199. Perils of the sea are from:

1. Storms and waves;

2. Rocks, shoals, and rapids;

3. Other obstacles, though of human origin;

4. Changes of climate;

5. The confinement necessary at sea;

6. Animals peculiar to the sea; and,

7. All other dangers peculiar to the sea.

Consignor of valuables to declare their nature.

SEC. 2200. A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass,

or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

Delivery of freight beyond usual route.

SEC. 2201. If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

Same; proof to be given in case of loss.

SEC. 2202. If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

Carrier's services, other than carriage and delivery.

SEC. 2203. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on deposit and service.

Sale of perishable property for freight.

SEC. 2204. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market, to satisfy his lien for freightage.

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

Section 2207. Order of transmission of telegraphic or telephonic messages.
2208. Order in other cases
2209. Damages when message is refused or postponed.

Order of transmission of telegraphic or telephonic messages.

SEC. 2207. A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and sev-

eral messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business;

2. Messages giving information relating to the sickness or death of any person;

3. Messages intended in good faith for immediate publication in newspapers, and not for any secret use;

4. Other messages in the order in which they were received.

COMMISSIONERS' NOTE: For reasons for inserting words "or telephone," see note to section 2161, *ante*. Subdivisions 2 and 3 of this section have been transposed, as the Commissioners believe that a dispatch concerning sickness or death should have precedence over a message intended only for publication in a newspaper.

Order in other cases.

SEC. 2208. A common carrier of messages, otherwise than by telegraph or telephone, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this state, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

COMMISSIONERS' NOTE: See note to section 2207, *supra*.

Damages when message is refused or postponed.

SEC. 2209. Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUSTS.

CHAPTER I. TRUSTS IN GENERAL. [2215–2244.]
II. TRUSTS FOR THE BENEFIT OF THIRD PERSONS. [2250–2289.]

CHAPTER I.

TRUSTS IN GENERAL.

ARTICLE I. NATURE AND CREATION OF A TRUST. [2215–2224.]
II. OBLIGATIONS OF TRUSTEES. [2228–2239.]
III. OBLIGATIONS OF THIRD PERSONS. [2243–2244.]

ARTICLE I.

NATURE AND CREATION OF A TRUST.

Section 2215. Trusts classified.
2216. Voluntary trust defined.
2217. Involuntary trust defined.
2218. Trustors, trustees, and beneficiaries defined.
2219. What constitutes one a trustee.
2220. For what purpose a trust may be created.
2221. Voluntary trust, how created as to trustor.
2222. How created as to trustee.
2223. Involuntary trustee, who is.
2224. Involuntary trust resulting from negligence, etc

Trusts classified.

SEC. 2215. A trust is either :

1. Voluntary ; or,

2. Involuntary.

Voluntary trust defined.

SEC. 2216. A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

Involuntary trust defined.

SEC. 2217. An involuntary trust is one which is created by operation of law.

Trustors, trustees, and beneficiaries defined.

SEC. 2218. The person whose confidence creates a trust is called the trustor ; the person in whom the confidence is reposed is called the trustee ; and the person for whose benefit the trust is created is called the beneficiary.

What constitutes one a trustee.

SEC. 2219. Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

For what purpose a trust may be created.

SEC. 2220. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the titles on uses and trusts and on transfers.

Voluntary trust, how created as to trustor.

SEC. 2221. Subject to the provisions of section 852, a voluntary trust is created, as to the trustor and beneficiary, by any

words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,

2. The subject, purpose, and beneficiary of the trust.

How created as to trustee.

SEC. 2222. Subject to the provisions of section 852, a voluntary trust is created as to the trustee, by any words or acts of his indicating, with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,

2. The subject, purpose, and beneficiary of the trust.

Involuntary trustee, who is.

SEC. 2223. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

Involuntary trust resulting from negligence, etc.

SEC. 2224. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

Section 2228. Trustee's obligation to good faith.
2229. Trustee not to use property for his own profit.
2230. Certain transactions forbidden.
2231. Trustee's influence not to be used for his advantage.
2232. Trustee not to assume a trust adverse to interest of beneficiary.
2233. Trustee to disclose adverse interest.
2234. Trustee guilty of fraud, when.
2235. Presumption against trustees.
2236. Trustee mingling trust property with his own.
2237. Measure of liability for breach of trust.
2238. Same.
2239. Co-trustees, how far liable for each other.

Trustee's obligation to good faith.

SEC. 2228. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Trustee not to use property for his own profit.

SEC. 2229. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

Certain transactions forbidden.

SEC. 2230. Neither a trustee or any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

Trustee's influence not to be used for his advantage

SEC. 2231. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

Trustee not to assume a trust adverse to interest of beneficiary.

SEC. 2232. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

Trustee to disclose adverse interest.

SEC. 2233. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof and may be at once removed.

Trustee guilty of fraud, when.

SEC. 2234. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust.

Presumption against trustees.

SEC. 2235. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence

acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

Trustee mingling trust property with his own.

SEC. 2236. A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

Measure of liability for breach of trust.

SEC. 2237. A trustee who uses or disposes of the trust property, contrary to section 2229, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

Same.

SEC. 2238. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

Co-trustees, how far liable for each other.

SEC. 2239. A trustee is responsible for the wrongful acts of a co-trustee, to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

Section 2243. Third person, when involuntary trustee.
2244. When third person must see to application of trust property.

Third person, when involuntary trustee.

SEC. 2243. Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.

When third person must see to application of trust property.

SEC. 2244. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way

be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE I. NATURE AND CREATION OF THE TRUST. [2250–2254.]
II. OBLIGATIONS OF TRUSTEES. [2258–2263.]
III. POWERS OF TRUSTEES. [2267–2269.
IV. RIGHTS OF TRUSTEES. [2273–2275.]
V. TERMINATION OF THE TRUST. [2279–2283.]
VI. SUCCESSION OR APPOINTMENT OF NEW TRUSTEES. [2287–2289.]

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

Section 2250. Who are trustees within scope of this chapter.
2251. Creation of trust.
2252. Trustees appointed by court.
2253. Declaration of trust.
2254. Same.

Who are trustees within scope of this chapter.

SEC. 2250. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

Creation of trust.

SEC. 2251. The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its recession.

Trustees appointed by court.

SEC. 2252. When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section.

Declaration of trust.

SEC. 2253. The nature, extent, and object of a trust are expressed in the declaration of trust.

Same.

SEC. 2254. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged thereon.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

Section 2258. Trustees must obey declaration of trust.
2259. Degree of care and diligence in execution of trust.
2260. Duty of trustee as to appointment of successor.
2261. Investment of money by trustee.
2262. Interest, simple or compound, on omission to invest trust money.
2263. Purchase by trustee of claims against trust fund.

Trustees must obey declaration of trust.

SEC. 2258. A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employé.

Degree of care and diligence in execution of trust.

SEC. 2259. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

Duty of trustee as to appointment of successor.

SEC. 2260. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

Investment of money by trustee.

SEC. 2261. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

Interest, simple or compound, on omission to invest trust moneys.

SEC. 2262. If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

Purchase by trustee of claims against trust fund.

SEC. 2263. A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.

POWERS OF TRUSTEES.

Section 2267. Trustee's powers as agent.
2268. All co-trustees must act, except, when.
2269. Discretionary powers.

Trustee's powers as agent.

SEC. 2267. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

All co-trustees must act, except, when.

SEC. 2268. Where there are several co-trustees, all must unite in any act to bind the trust property, except as provided in section 2288, and section 1355, Code of Civil Procedure, unless the declaration of trust otherwise provides.

COMMISSIONERS' NOTE: The words "except as provided in section 2288 and section 1355, Code of Civil Procedure," are added to section 2268 to harmonize that section with 2288, this code, and section 1355, Code of Civil Procedure.

Discretionary powers.

SEC. 2269. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.

RIGHTS OF TRUSTEES.

Section 2273. Indemnification of trustee.
2274. Compensation of trustee.
2275. Involuntary trustee.

Indemnification of trustee.

SEC. 2273. A trustee is entitled to the repayment, out of the trust property, of all expenses, actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawul expenditures, if they were productive of actual benefit to the estate.

Compensation of trustee.

SEC. 2274. Except as provided in section 1700 of the Code of Civil Procedure, when a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of

his compensation, he is entitled to the amount thus specified, and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances.

Involuntary trustee.

SEC. 2275. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

ARTICLE V.

TERMINATION OF THE TRUST.

Section 2279. Trust, how extinguished.
2280. Not revocable.
2281. Trustee's office, how vacated.
2282. Trustee, how discharged.
2283. Removal by superior court.

Trust, how extinguished.

SEC. 2279. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

Not revocable.

SEC. 2280. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

Trustee's office, how vacated.

SEC. 2281. The office of trustee is vacated:

1. By his death; or,
2. By his discharge.

Trustee, how discharged.

SEC. 2282. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he had capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the superior court.

Removal by superior court.

SEC. 2283. The superior court may remove any trustee who has violated or is unfit to execute the trust; or may accept the resignation of a trustee.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

Section 2287. Vacant trusteeship filled by court.
2288. Survivorship between co-trustees.
2289. Superior court as trustee.

Vacant trusteeship filled by court.

SEC. 2287. The superior court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

Survivorship between co-trustees.

SEC. 2288. On the death, renunciation, or discharge of one of several co-trustees, the trust survives to the others.

Superior court as trustee.

SEC. 2289. When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the superior court of the county where the trust property, or some portion thereof, is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

TITLE IX.

AGENCY.

CHAPTER I. AGENCY IN GENERAL. [2295–2356.]
II. PARTICULAR AGENCIES. [2362–2389.]

CHAPTER I.

AGENCY IN GENERAL.

ARTICLE I. DEFINITION OF AGENCY. [2295–2300.]
II. AUTHORITY OF AGENTS. [2304–2326.]
III. MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS. [2330–2339.]
IV. OBLIGATIONS OF AGENTS TO THIRD PERSONS. [2342–2345.]
V. DELEGATION OF AGENCY. [2349–2351.]
VI. TERMINATION OF AGENCY. [2355–2356.]

ARTICLE I.

DEFINITION OF AGENCY.

Section 2295. Agency defined.
2296. Who may appoint, and who may be an agent.
2297. Agents, general or special.
2298. Agency, actual or ostensible.
2299. Actual agency defined.
2300. Ostensible agency defined.

Agency defined.

SEC. 2295. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

Who may appoint, and who may be an agent.

SEC. 2296. Any person having capacity to contract may appoint an agent, and any person may be an agent.

Agents, general or special.

SEC. 2297. An agent for a particular act or transaction is called a special agent. All others are general agents.

Agency, actual or ostensible.

SEC. 2298. An agency is either actual or ostensible.

Actual agency defined.

SEC. 2299. An agency is actual when the agent is really employed by the principal.

Ostensible agency defined.

SEC. 2300. An agency is ostensible when the principal, intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

ARTICLE II.

AUTHORITY OF AGENTS.

Section 2304. What authority may be conferred.
2305. Agent may perform acts required of principal by code.
2306. Agent cannot have authority to defraud principal.
2307. Creation of agency.
2308. Consideration unnecessary.
2309. Form of authority.
2310. Ratification of agent's act.
2311. Ratification of part of a transaction.
2312. When ratification void.
2313. Ratification not to work injury to third persons.
2314. Rescission of ratification.
2315. Measure of agent's authority.
2316. Actual authority defined.
2317. Ostensible authority defined.
2318 Agent's authority as to persons having notice of restrictions upon it.

Section 2319. Agent's necessary authority.
2320. Agent's power to disobey instructions.
2321. Authority to be construed by its specific, rather than by its general terms.
2322. Exceptions to general authority.
2323. What included in authority to sell personal property.
2324. What included in authority to sell real property.
2325. Authority of general agent to receive price of property.
2326. Authority of special agent to receive price.

What authority may be conferred.

SEC. 2304. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

Agent may perform acts required of principal by code.

SEC. 2305. Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

Agent cannot have authority to defraud principal.

SEC. 2306. An agent can never have authority, either actual or ostensible, to do any act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

Creation of agency.

SEC. 2307. An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

Consideration unnecessary.

SEC. 2308. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

Form of authority.

SEC. 2309. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

Ratification of agent's act.

SEC. 2310. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

Ratification of part of a transaction.

SEC. 2311. Ratification of part of an indivisible transaction is a ratification of the whole.

When ratification void.

SEC. 2312. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

Ratification not to work injury to third persons.

SEC. 2313. No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

Rescission of ratification.

SEC. 2314. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

Measure of agent's authority.

SEC. 2315. An agent has such authority as the principal, actually or ostensibly, confers upon him.

Actual authority defined.

SEC. 2316. Actual authority is such as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, causes or allows the agent to believe himself to possess.

Ostensible authority defined.

SEC. 2317. Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

Agent's authority as to persons having notice of restrictions upon it.

SEC. 2318. Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

Agent's necessary authority.

SEC. 2319. An agent has authority:

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

Agent's power to disobey instructions.

SEC. 2320. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

Authority to be construed by its specific rather than by its general terms.

SEC. 2321. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

Exceptions to general authority.

SEC. 2322. An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;

2. To define the scope of his agency;

3. To do any act which a trustee is forbidden to do by Article II, Chapter I, of the last title.

What included in authority to sell personal property.

SEC. 2323. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

What included in authority to sell real property.

SEC. 2324. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

Authority of general agent to receive price of property.

SEC. 2325. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

Authority of special agent to receive price.

SEC. 2326. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

Section 2330. Principal, how affected by acts of agent within the scope of his authority.
2331. Principal, when bound by incomplete execution of authority.
2332. Notice to agent when notice to principal.
2333. Obligation of principal when agent exceeds his authority.
2334. For acts done under a merely ostensible authority.
2335. When exclusive credit is given to agent.
2336. Rights of person who deals with agent without knowledge of agency.
2337. Instrument intended to bind principal does bind him.
2338. Principal's responsibility for agent's negligence or omission.
2339. Principal's responsibility for wrongs willfully committed by the agent.

Principal, how affected by acts of agent within the scope of his authority.

SEC. 2330. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

Principal, when bound by incomplete execution of authority.

SEC. 2331. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

Notice to agent when notice to principal.

SEC. 2332. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith, and the exercise of ordinary care and diligence, to communicate to the other.

Obligation of principal when agent exceeds his authority.

SEC. 2333. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

For acts done under a merely ostensible authority.

SEC. 2334. A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value, upon the faith thereof.

When exclusive credit is given to agent.

SEC. 2335. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good

faith, before receiving notice of the creditor's election to hold him responsible.

Rights of person who deals with agent without knowledge of agency.

SEC. 2336. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

Instrument intended to bind principal does bind him.

SEC. 2337. An instrument, within the scope of his authority, by which an agent intends to bind his principal, does bind him if such intent is plainly inferrable from the instrument itself.

Principal's responsibility for agent's negligence or omission.

SEC. 2338. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

Principal's responsibility for wrongs willfully committed by the agent.

SEC. 2339. A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

Section 2342. Warranty of authority.
2343. Agent's responsibility to third persons.
2344. Obligation of agent to surrender property to third person.
2345. Agent not having capacity to contract.

Warranty of authority.

SEC. 2342. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

Agent's responsibility to third persons.

SEC. 2343. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,

3. When his acts are wrongful in their nature.

Obligation of agent to surrender property to third person.

SEC. 2344. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he deliver it to his principal.

Agent not having capacity to contract.

SEC. 2345. The provisions of this article are subject to the provisions of Part I, Division First, of this code.

ARTICLE V.

DELEGATION OF AGENCY.

Section 2349. Agent's delegation of his powers.
2350. Agent's unauthorized employment of sub-agent.
2351. Sub-agent rightfully appointed, represents principal.

Agent's delegation of his powers.

SEC. 2349. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;

2. When it is such as the agent cannot himself, and the sub-agent can lawfully perform;

3. When it is the usage of the place to delegate such powers;

4. When such delegation is specially authorized by the principal.

Agent's unauthorized employment of sub-agent.

SEC. 2350. If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

Sub-agent rightfully appointed, represents principal.

SEC. 2351. A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the

original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

Section 2355. Termination of agency.
2356. Same.

Termination of agency.

SEC. 2355. An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term;
2. The extinction of its subject;
3. The death of the agent;
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

COMMISSIONERS' NOTE: The amendment to this section consists in changing the word "agency," in the fifth subdivision, to "agent." The amendment was suggested by the Commissioners of 1895, and their note thereto reads as follows: "The amendment changes the word 'agency' to 'agent,' in the fifth subdivision of the section."

Same.

SEC. 2356. Unless the power of the agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I. AUCTIONEERS. [2362–2363.]
II. FACTORS. [2367–2369.]
III. SHIPMASTERS AND PILOTS. [2373–238
IV. SHIPS' MANAGERS. [2388–2389.]

ARTICLE I.

AUCTIONEERS.

Section 2362. Auctioneer's authority from the seller.
2363. Auctioneer's authority from the bidder.

Auctioneer's authority from the seller.

SEC. 2362. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller only as follows:

1. To sell by public auction to the highest bidder;

2. To sell for cash only, except such articles as are usually sold on credit at auction;

3. To warrant, in like manner with other agents, to sell according to section 2323;

4. To prescribe reasonable rules and terms of sale;

5. To deliver the thing sold upon payment of the price;

6. To collect the price; and,

7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

Auctioneer's authority from the bidder.

SEC. 2363. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the title on sale.

ARTICLE II.

FACTORS.

Section 2367. Factor defined.
2368. Actual authority of factor.
2369. Ostensible authority.

Factor defined.

SEC. 2367. A factor is an agent, as defined by section 2026.

Actual authority of factor.

SEC. 2368. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured;

2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

Ostensible authority.

SEC. 2369. A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

ARTICLE III.

SHIPMASTERS AND PILOTS.

Section 2373. Authority of shipmaster on behalf of shipowner.
2374. Authority to borrow.
2375. Authority on behalf of owners of cargo.
2376. Power to make contracts.
2377. Power to hypothecate.
2378. Master's power to sell ship.
2379. Master's power to sell cargo.

Section 2380. Authority to ransom ship.
2381. Abandonment terminates master's power.
2382. Personal liability for contracts concerning the ship.
2383. Liability for acts of persons employed upon the ship.
2384. Responsibility for negligence of pilot.
2385. Obligations of shipowner to owner of cargo.

Authority of shipmaster on behalf of shipowner.

SEC. 2373. The master of a ship is a general agent for its owner in all matters concerning the same.

Authority to borrow.

SEC. 2374. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

Authority on behalf of owners of cargo.

SEC. 2375. The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, but he cannot sell or hypothecate the cargo, except in the cases mentioned in this article.

Power to make contracts.

SEC. 2376. The master of a ship may procure all its necessary repairs and supplies, may engage passengers and cargo for carriage, and, in a foreign port, may enter into a charter party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

Power to hypothecate.

SEC. 2377. The master of a ship may hypothecate the ship, freightage, and cargo, and sell part of the cargo, in the cases prescribed by the chapters on bottomry and respondentia, and in no others, except that the master may also sell the cargo, or any part of it, short of the port of destination, if found to be of such perishable nature, or in such damaged condition, that if left on board or reshipped it would be entirely lost, or would seriously endanger the interests of its owners.

Master's power to sell ship.

SEC. 2378. When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

Master's power to sell cargo.

SEC. 2379. The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

Authority to ransom ship.

SEC. 2380. The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage, and cargo.

Abandonment terminates master's power.

SEC. 2381. The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to its insurers.

Personal liability for contracts concerning the ship.

SEC. 2382. Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

Liability for acts of persons employed upon the ship.

SEC. 2383. The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

Responsibility for negligence of pilot.

SEC. 2384. The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is so responsible to third persons.

Obligations of shipowner to owner of cargo.

SEC. 2385. The owner of a ship is bound to pay to the owner of her cargo the market value at the time of the arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay for the necessary repairs and supplies of the ship.

ARTICLE IV.

SHIPS' MANAGERS.

Section 2388. What powers manager has.
2389. What powers he has not.

What powers manager has.

SEC. 2388. A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage; and to settle for freightage and adjust averages.

What powers he has not.

SEC. 2389. Without special authority, a ship's manager cannot borrow money, or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

TITLE X.

PARTNERSHIP.

CHAPTER I. PARTNERSHIP IN GENERAL. [2395–2418.]
II. GENERAL PARTNERSHIP. [2424–2472.]
III. SPECIAL PARTNERSHIP. [2477–2510.]
IV. MINING PARTNERSHIP. [2511–2520.]

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I. WHAT CONSTITUTES A PARTNERSHIP. [2395–2397.]
II. PARTNERSHIP PROPERTY. [2401–2406.]
III. MUTUAL OBLIGATION OF PARTNERS. [2410–2418.]
IV. RENUNCIATION OF PARTNERSHIP. [2417–2418.]

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

Section 2395. Partnership defined.
2396. Shipowners.
2397. Formation of partnership.

Partnership defined.

SEC. 2395. Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

Shipowners.

SEC. 2396. Part owners of a ship do not, by simply using it in a joint enterprise, become partners as to the ship.

Formation of partnership.

SEC. 2397. A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

ARTICLE II.

PARTNERSHIP PROPERTY.

Section 2401. Partnership property defined.
2402. Partner's interest in partnership property.
2403. Partner's share in profits and losses.
2404. When division of losses implied.
2405. Partner may require application of partnership property to payment of debts.
2406. What property is partnership property by presumption.

Partnership property defined.

SEC. 2401. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

Partner's interest in partnership property.

SEC. 2402. The interest of each member of a partnership extends to every portion of its property.

Partner's share in profits and losses.

SEC. 2403. In the absence of any agreement on the subject, the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

When division of losses implied.

SEC. 2404. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

Partner may require application of partnership property to payment of debts.

SEC. 2405. Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance if any due to him.

What property is partnership property by presumption.

SEC. 2406. Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

Section 2410. Partners trustees for each other.
2411. Good faith to be observed between them
2412. Mutual liability of partners to account.
2413. No compensation for services to firm.

Partners trustees for each other.

SEC. 2410. The relations of partners are confidential. They are trustees for each other within the meaning of Chapter I of the title on trusts, and their obligations as such trustees are defined by that chapter.

Good faith to be observed between them.

SEC. 2411. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his co-partners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Mutual liabilities of partners to account.

SEC. 2412. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

No compensation for services to firm.

SEC. 2413. A partner is not entitled to any compensation for services rendered by him to the partnership.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

Section 2417. Renunciation of future profits exonerates from liability.
2418. Effect of renunciation.

Renunciation of future profits exonerates from liability.

SEC. 2417. A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own co-partners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership, and does not intend to be liable on account thereof for the future.

Effect of renunciation.

SEC. 2418. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his co-partners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

ARTICLE I. WHAT IS A GENERAL PARTNERSHIP. [2424.]
II. POWERS AND AUTHORITY OF PARTNERS. [2428–2431.]
III. MUTUAL OBLIGATIONS OF PARTNERS. [2435–2438.]
IV. LIABILITY OF PARTNERS. [2442–2445.]
V. TERMINATION OF PARTNERSHIP. [2449–2454.]
VI. LIQUIDATION. [2458–2462.]
VII. OF THE USE OF FICTITIOUS NAMES. [2466–2472.]

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

Section 2424. General partnership defined.

General partnership defined.

SEC. 2424. Every partnership that is not formed in accordance with the law concerning special or mining partnerships, and every special partnership so far only as the general partners are concerned, is a general partnership.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

Section 2428. Power of majority of partners.
2429. Authority of individual partner.
2430. What authority partner has not.
2431. Partner's acts in bad faith, when ineffectual.

Power of majority of partners.

SEC. 2428. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

Authority of individual partner.

SEC. 2429. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his co-partners by an agreement in writing.

What authority partner has not.

SEC. 2430. A partner, as such, has not authority to do any of the following acts, unless his co-partners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors;

2. To dispose of the good will of the business;

3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;

4. To do any act which would make it impossible to carry on the ordinary business of the partnership;

5. To confess a judgment;

6. To submit a partnership claim to arbitration;

7. To do any other act not within the scope of the preceding section.

Partner's acts in bad faith, when ineffectual.

SEC. 2431. A partner is not bound by any act of a co-partner in bad faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

Section 2435. Profits of individual partner.
2436. In what business partner may not engage.
2437. In what he may engage.
2438. Must account to firm for profits.

Profits of individual partner.

SEC. 2435. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

In what business partner may not engage.

SEC. 2436. A general partner who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

In what he may engage.

SEC. 2437. A partner may engage in any separate business, except as otherwise provided by the last two sections.

Must account to firm for profits.

SEC. 2438. A general partner transacting business contrary to the provisions of this article may be required by any co-partner to account to the partnership for the profits of such business.

ARTICLE IV.

LIABILITY OF PARTNERS.

Section 2442. Liability of partners to third persons.
2443. Liability for each other's acts as agents.
2444. Liability of one held out as partner.
2445. No one liable as partner unless held out as such.

Liability of partners to third persons.

SEC. 2442. Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

Liability for each other's acts as agent.

SEC. 2443. The liability of general partners for each other's acts is defined by the title on agency.

Liability of one held out as partner.

SEC. 2444. Any one permitting himself to be represented as a partner, general or special, is liable, as such, to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership.

No one liable as partner unless held out as such.

SEC. 2445. No one is liable as a partner who is not such in fact, except as provided in the last section.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

Section 2449. Duration of partnership.
2450. Total dissolution of partnership.
2451. Partial dissolution.
2452. Partner entitled to dissolution.
2453. Notice of termination.
2454. Notice by change of name.

Duration of partnership.

SEC. 2449. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

Total dissolution of partnership.

SEC. 2450. A general partnership is dissolved as to all of the partners:

1. By lapse of the time prescribed by agreement for its duration;

2. By the expressed will of any partner, if there is no such agreement;

3. By the death of a partner;

4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property;

5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,

6. By a judgment of dissolution.

Partial dissolution.

SEC. 2451. A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liabilty to his co-partners for any damage caused to them thereby, unless the circumstances are such as to entitle him to a judgment of dissolution.

Partner entitled to dissolution.

SEC. 2452. A general partner is entitled to a judgment of dissolution:

1. When he, or another partner, becomes legally incapable of contracting;

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

3. When the business of the partnership can be carried on only at a permanent loss.

Notice of termination.

SEC. 2453. The liability of a general partner for the acts of his co-partners continues, even after a dissolution of the co-partnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a newspaper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm.

Notice by change of name.

SEC. 2454. A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

ARTICLE VI.

LIQUIDATION.

Section 2458. Powers of partners after dissolution.
2459. Who may act in liquidation.
2460. Who may not act in liquidation.
2461. Powers of partners in liquidation.
2462. What partner may do in liquidation.

Powers of partners after dissolution.

SEC. 2458. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

Who may act in liquidation.

SEC. 2459. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

Who may not act in liquidation.

SEC. 2460. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof.

Powers of partners in liquidation.

SEC. 2461. A partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

What partner may do in liquidation.

SEC. 2462. A partner authorized to act in liquidation may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment when an action thereon is barred under the provisions of the Code of Civil Procedure.

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

Section 2466. Fictitious name.
2467. *Omitted.*
2468. Certificate, when to be filed.
2469. New certificates on change of partner.
2470. Register of such firms to be kept by county clerk.
2471. Certified copies of register, and proof of publication, to be evidence.
2472. Failure to comply with sections 2466 and 2469 a misdemeanor.

Fictitious name.

SEC. 2466. Except as otherwise provided in the next section, every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate stating the names in full of all the members of such partnership, and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

SEC. 2467. *Omitted.* Repeal recommended.

COMMISSIONERS' NOTE. This section should be stricken out, for reasons given in note to this article.

Certificate, when to be filed.

SEC. 2468. The certificate filed with the clerk, as provided in section 2466, must be signed by the partners, and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed, and the publication made within six months after the adoption of this code. Persons doing business as partners contrary to the provisions of this article shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this state, until they have first filed the certificate and made the publication herein required.

New certificates on change of partner.

SEC. 2469. On every change in the members of a partnership transacting business in this state, under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, a new certificate must be filed with the county clerk, and a new publication made, as required by this article, on the formation of such partnership.

Register of such firms to be kept by county clerk.

SEC. 2470. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed

with him, pursuant to this article, entering in alphabetical order the name of every such partnership, and of each partner therein.

Certified copies of register, and proof of publication, to be evidence.

SEC. 2471. Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

Failure to comply with sections 2466 and 2469 a misdemeanor.

SEC. 2472. Every such partnership as that designated in section 2466 and section 2469, and each member thereof, failing to comply with the provisions of said sections, and of each of them, shall be guilty of a misdemeanor.

COMMISSIONERS' NOTE: This section is suggested to enforce compliance with the provisions of the sections therein referred to, now disregarded by many firms doing business in this state.

COMMISSIONERS' NOTE: The changes made in Article VII of this chapter, with reference to fictitious names, are to compel foreign commercial and banking partnerships to subject themselves to the same rules concerning the use of fictitious names as are enforced against domestic partnerships. The Commissioners can see no reason why a fictitious name from New Zealand should be entitled to more credit or privilege than one within the state.

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I. FORMATION OF PARTNERSHIP. [2477–2485.]
II. POWERS, RIGHTS, AND DUTIES OF THE PARTNERS. [2489–2496.]
III. LIABILITY OF PATRNERS. [2500–2503.]
IV. ALTERATION AND DISSOLUTION OF THE PARTNERSHIP. [2507–2510.]

ARTICLE I.

FORMATION OF PARTNERSHIP.

Section 2477. Formation of special partnership.
2478. Of what to consist.
2479. Certified statement.
2480. Acknowledged and recorded. False statement.
2481. Affidavit as to sums contributed.
2482. No partnership until compliance.
2483. Certificate to be published.
2484. Affidavit of publication filed.
2485. Renewal of special partnership.

Formation of special partnership.

SEC. 2477. A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in

this chapter, for the transaction of any business except banking or insurance.

Of what to consist.

SEC. 2478. A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

Certified statement.

SEC. 2479. Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which the partnership is to be conducted;
2. The general nature of the business intended to be transacted;
3. The names of all the partners and their residences, specifying which are general and which are special partners;
4. The amount of capital which each special partner has contributed to the common stock;
5. The periods at which such partnership will begin and end.

Acknowledged and recorded. False statement.

SEC. 2480. Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, one to be filed in the clerk's office, and the other recorded in the office of the recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it is recorded, must be filed in the clerk's office, and recorded in like manner in the office of the recorder in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

Affidavit as to sums contributed.

SEC. 2481. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed in the same office with the original certificate.

No partnership until compliance.

SEC. 2482. No special partnership is formed until the provisions of this article are complied with.

Certificate to be published.

SEC. 2483. The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper published in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper published in an adjoining county. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general.

Affidavit of publication filed.

SEC. 2484. An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher, or chief clerk of the newspaper in which such publication is made, may be filed with the county recorder with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

Renewal of special partnership.

SEC. 2485. Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation.

ARTICLE II.

POWERS, RIGHTS, AND DUTIES OF THE PARTNERS.

Section 2489. General partners to transact business.
2490. Special partners may investigate and advise.
2491. Special partners may loan money. Insolvency.
2492. General partners may sue and be sued.
2493. Withdrawal of capital.
2494. Interest and profits.
2495. Result of withdrawing capital.
2496. Preferential transfer void.

General partners to transact business.

SEC. 2489. The general partners only have authority to transact the business of a special partnership.

Special partners may investigate and advise.

SEC. 2490. A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management.

Special partners may loan money. Insolvency.

SEC. 2491. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights

as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

General partners may sue and be sued.

SEC. 2492. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

Withdrawal of capital.

SEC. 2493. No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

Interest and profits.

SEC. 2494. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

Result of withdrawing capital.

SEC. 2495. If a special partner withdraws capital from the firm, contrary to the provisions of this article, he thereby becomes a general partner.

Preferential transfer void.

SEC. 2496. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

ARTICLE III.

LIABILITY OF PARTNERS.

Section 2500. Liability of partners.
2501. Of special partners.
2502. Liability for unintentional act.
2503. Who may question existence of special partnership.

Liability of partners.

SEC. 2500. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

Of special partners.

SEC. 2501. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable, as a general partner, to all creditors of the firm;

2. If he has willfully interfered with the business of the firm, except as permitted in Article II of this chapter, he is liable in like manner; or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of Article II of this chapter, he is liable in like manner.

Liability for unintentional act.

SEC. 2502. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable, as a general partner, to any creditor of the firm who has been actually misled thereby to his detriment or prejudice.

Who may question existence of special partnership.

SEC. 2503. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership, in the manner required by Article I of this chapter.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

Section 2507. When special partnership becomes general.
2508. How new special partners may be admitted.
2509. Dissolution of special partnerships. Notice.
2510. The name of a special partner not used, unless.

When special partnership becomes general.

SEC. 2507. A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature

of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk and recorder with whom the original certificate of the partnership was filed, and notice thereof published as is provided in Article I of this chapter for the publication of the certificate.

How new special partners may be admitted.

SEC. 2508. New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them, and by the general partners verified, acknowledged, or proved, according to the provisions of Article I of this chapter, and filed with the county clerk and recorded with whom the original certificate of partnership was filed.

Dissolution of special partnerships. Notice.

SEC. 2509. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county clerk and recorder with whom the original certificate was recorded, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

The name of a special partner not used, unless.

SEC. 2510. The name of a special partner must not be used in the firm name of the partnership, unless it be accompanied with the word "limited."

CHAPTER IV.

MINING PARTNERSHIPS.

Section 2511. When a mining partnership exists.
2512. Express agreement not necessary to constitute.
2513. Profits and losses, how shared.
2514. Lien of partners.
2515. Mines, partnership property.
2516. Partnership not dissolved by sale of interest.
2517. Purchaser takes, subject to liens, unless, etc.
2518. Takes with notice of lien, when.
2519. Contract in writing, when binding.
2520. Owners of majority of shares govern.

When a mining partnership exists.

SEC. 2511. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of

working it and extracting the mineral therefrom actually engage in working the same.

Express agreement not necessary to constitute.

SEC. 2512. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

Profits and losses, how shared.

SEC. 2513. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

Lien of partners.

SEC. 2514. Each member of a mining partnership has a lien on the partnership property for the debts due to the creditors thereof, and for money advanced by him for its use. This lien exists notwithstanding there is an agreement among the partners that it must not.

Mines, partnership property.

SEC. 2515. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

Partnership not dissolved by sale of interest.

SEC. 2516. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

Purchaser takes, subject to liens, unless, etc.

SEC. 2517. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

Takes with notice of lien, when.

SEC. 2518. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

Contract in writing, when binding.

SEC. 2519. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

Owners of majority of shares govern.

SEC. 2520. The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

TITLE IX.

INSURANCE.

CHAPTER I. INSURANCE IN GENERAL. [2527–2649.]
II. MARINE INSURANCE. [2655–2746.]
III. FIRE INSURANCE. [2752–2756.]
IV. LIFE AND HEALTH INSURANCE. [2762–2766.]

CHAPTER I.

INSURANCE IN GENERAL.

ARTICLE I. DEFINITION OF INSURANCE. [2527.]
II. WHAT MAY BE INSURED. [2531–2534.]
III. PARTIES. [2538–2542.]
IV. INSURABLE INTEREST. [2546–2558.]
V. CONCEALMENT AND REPRESENTATION. [2561–2583.]
VI. THE POLICY. [2586–2599.]
VII. WARRANTIES. [2603–2612.]
VIII. PREMIUMS. [2616–2622.]
IX. LOSS. [2626–2629.]
X. NOTICE OF LOSS. [2633–2637.]
XI. DOUBLE INSURANCE, [2641–2642.]
XII. REINSURANCE. [2646–2649.]

ARTICLE I.

DEFINITION OF INSURANCE.

Section 2527. Insurance defined.

Insurance defined.

SEC. 2527. Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

ARTICLE II.

WHAT MAY BE INSURED.

Section 2531. What events may be insured against.
2532. Insurance of lottery or lottery prize unauthorized.
2533. Usual kinds of insurance.
2534. All subject to this chapter.

What events may be insured against.

SEC. 2531. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

Insurance of lottery or lottery prize unauthorized.

SEC. 2532. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

Usual kinds of insurance.

SEC. 2533. The most usual kinds of insurance are:

1. Marine insurance;
2. Fire insurance;
3. Life insurance;
4. Health insurance;
5. Accident insurance; and,
6. Title insurance.

COMMISSIONERS' NOTE: The additional subdivision in section 2533 is added to conform to the existing law concerning things which may be insured.

All subject to this chapter.

SEC. 2534. All kinds of insurance are subject to the provisions of this chapter.

ARTICLE III.

PARTIES TO THE CONTRACT.

Section 2538. Designation of parties.
2539. Who may insure.
2540. Who may be insured.
2541. Assignment to mortgagee of thing insured.
2542. New contract between insurer and assignee.

Designation of parties.

SEC. 2538. The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured.

Who may insure.

SEC. 2539. Any one capable of making a contract may be an insurer, subject to the restrictions imposed by the laws of this state.

COMMISSIONERS' NOTE: The Commissioners have stricken out all after the word "by" and inserted in lieu thereof the words "the laws of this state," so as to make the insurer subject to all laws of the state which may be applicable.

Who may be insured.

SEC. 2540. Any one except a public enemy may be insured.

Assignment to mortgagee of thing insured.

SEC. 2541. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

New contract between insurer and assignee.

SEC. 2542. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.

INSURABLE INTEREST.

Section 2546. Insurable interest defined.
2547. In what may consist.
2548. Interest of carrier or depositary.
2549. Mere expectancies not insurable.
2550. Measure of insurable interest in property.
2551. Insurance without interest, illegal.
2552. When interest must exist.
2553. Effect of transfer.
2554. Transfer after loss.
2555. Exception in the case of several subjects in one policy.
2556. In case of the death of the insurer.
2557. In case of transfer between co-tenants.
2558. Policy, when void.

Insurable interest defined.

SEC. 2546. Every interest in property, or any relation thereto, or liability in respect thereof, of such nature that a contemplated peril might directly damnify the insured, is an insurable interest.

In what may consist.

SEC. 2547. An insurable interest in property may consist in:

1. An existing interest;

2. An inchoate interest founded on an existing interest; or,

3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

Interest of carrier, or depositary.

SEC. 2548. A carrier, or depositary of any kind, has an insurable interest in a thing held by him as such, to the extent of its value.

Mere expectancies not insurable.

SEC. 2549. A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

Measure of insurable interest in property.

SEC. 2550. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

Insurance without interest, illegal.

SEC. 2551. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

When interest must exist.

SEC. 2552. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

Effect of transfer.

SEC. 2553. Except in the cases specified in the next four sections, and in the cases of life, health, and accident insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

Transfer after loss.

SEC. 2554. A change of interest in anything insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

Exception in the case of several subjects in one policy.

SEC. 2555. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

In case of the death of the insurer.

SEC. 2556. A change of interest, by will or succession, on the death of the insured, does not avoid the insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

In case of transfer between co-tenants.

SEC. 2557. A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed upon that the insurance shall cease upon an alienation of the thing insured.

Policy, when void.

SEC. 2558. Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering is void.

ARTICLE V.

CONCEALMENT AND REPRESENTATIONS.

Section 2561. Concealment defined.
2562. Effect of concealment.
2563. What must be disclosed.
2564. Matters which need not be communicated without inquiry.
2565. Test of materiality.
2566. Matters which each is bound to know.
2567. Waiver of communication.
2568. Interest of insured.
2569. Fraudulent warranty.
2570. Matters of opinion.
2571. Representation, form of.
2572. When made.
2573. How interpreted.
2574. Representations as to future.
2575. How may affect policy.
2576. When may be withdrawn.
2577. Time intended by representation.
2578. Representing information.
2579. Representations, falsity of.
2580. Effect of falsity.
2581. Materiality of representations.
2582. Application of provisions of this article.
2583. Right to rescind.

Concealment defined.

SEC. 2561. A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

Effect of concealment.

SEC. 2562. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

What must be disclosed.

SEC. 2563. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge, which are or which he believes to be material to the contract, and which the other has not the means af ascertaining, and as to which he makes no warranty.

Matters which need not be communicated without inquiry.

SEC. 2564. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows;

2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;

3. Those of which the other waives communication;

4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,

5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

Test of materiality.

SEC. 2565. Materiality is to be determined, not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

Matters which each is bound to know.

SEC. 2566. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade.

Waiver of communication.

SEC. 2567. The right to information of material facts may be waived either by the terms of insurance or by neglect to

make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

Interest of insured.

SEC. 2568. Information of the nature or amount of the interest of one insured need not be communicated, unless in answer to an inquiry, except as prescribed by section 2587.

Fraudulent warranty.

SEC. 2569. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

Matters of opinion.

SEC. 2570. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

Representation, form of.

SEC. 2571. A representation may be oral or written.

When made.

SEC. 2572. A representation may be made at the same time with issuing the policy, or before it.

How interpreted.

SEC. 2573. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

Representations as to future.

SEC. 2574. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

How may affect policy.

SEC. 2575. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

When may be withdrawn.

SEC. 2576. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

Time intended by representation.

SEC. 2577. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

Representing information.

SEC. 2578. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence.

Representations, falsity of.

SEC. 2579. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

Effect of falsity.

SEC. 2580. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

Materiality of representations.

SEC. 2581. The materiality of a representation is determined by the same rule as the materiality of a concealment.

Application of provisions of this article.

SEC. 2582. The provisions of this article apply as well to a modification of a contract of insurance as to its original formation.

Right to rescind.

SEC. 2583. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

ARTICLE VI.

THE POLICY.

Section 2586. Policy defined.
2587. What must be specified in a policy.
2588. Whose interest is covered.
2589. Insurance by agent or trustee.
2590. Insurance by part owner.
2591. General terms.
2592. Successive owners.
2593. Transfer of the thing insured.
2594. Open and valued policies.
2595. Open policy defined.
2596. Valued policy defined.
2597. Running policy defined.
2598. Effect of receipt.
2599. Agreement not to transfer.

Policy defined.

SEC. 2586. The written instrument in which a contract of insurance is set forth is called a policy of insurance.

What must be specified in a policy.

SEC. 2587. A policy of insurance must specify:

1. The parties between whom the contract is made;
2. The rate of premium;
3. The property or life insured;
4. The interest of the insured in property insured, if he is not the absolute owner thereof;
5. The risks insured against; and,
6. The period during which the insurance is to continue.

Whose interest is covered.

SEC. 2588. When the name of the person intended to be insured is specified in the policy, it can be applied only to his own proper interest.

Insurance by agent or trustee.

SEC. 2589. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

Insurance by part owner.

SEC. 2590. To render an insurance, effected by one partner or part owner, applicable to the interest of his co-partners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

General terms.

SEC. 2591. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

Successive owners.

SEC. 2592. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

Transfer of the thing insured.

SEC. 2593. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured.

Open and valued policies.

SEC. 2594. A policy is either open or valued.

Open policy defined.

SEC. 2595. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

Valued policy defined.

SEC. 2596. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Running policy defined.

SEC. 2597. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

Effect of receipt.

SEC. 2598. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Agreement not to transfer.

SEC. 2599. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

ARTICLE VII.

WARRANTIES.

Section 2603. Warranty, express or implied.
2604. Form of.
2605. Warranty, in what contained.
2606. Past, present, and future warranties.
2607. Warranty as to facts.
2608. Warranty as to future acts or omissions.
2609. Performance excused.
2610. What acts entitle parties to rescind.
2611. Policy may provide for avoidance.
2612. Breach without fraud.

Warranty, express or implied.

SEC. 2603. A warranty is either express or implied.

Form of.

SEC. 2604. No particular form of words is necessary to create a warranty.

Warranty, in what contained.

SEC. 2605. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured, and referred to in the policy, as making a part of it; and in every such case a copy thereof shall be given to the insured.

COMMISSIONERS' NOTE: This amendment is suggested so that the insured as well as the insurer shall have a copy of the entire agreement.

Past, present, and future warranties.

SEC. 2606. A warranty may relate to the past, the present, the future, or to any or all of these.

Warranty as to facts.

SEC. 2607. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

Warranty as to future acts or omissions.

SEC. 2608. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

Performance excused.

SEC. 2609. When before the time arrives for the peformance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

What acts entitle parties to rescind.

SEC. 2610. The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

Policy may provide for avoidance.

SEC. 2611. A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy.

Breach without fraud.

SEC. 2612. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk.

ARTICLE VIII

PREMIUM.

Section 2616. When premium is earned.
2617. Return of premium.
2618. When none allowed.
2619. Return for fraud.
2620. Over-insurance by several insurers.
2621. Contribution.
2622. Proportionate contribution.

When premium is earned.

SEC. 2616. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

Return of premium.

SEC. 2617. A person insured is entitled to return of premium, as follows:

1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against;

2. Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

When none allowed.

SEC. 2618. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned, except as provided in this article.

COMMISSIONER'S NOTE: This amendment is suggested in order to harmonize this section with the other sections of this article.

Return for fraud.

SEC. 2619. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

Over-insurance by several insurers.

SEC. 2620. In case of an over-insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured

in all the policies exceeds the insurable value of the thing at risk.

Contribution.

SEC. 2621. When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies.

Proportionate contribution.

SEC. 2622. When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

ARTICLE IX.

LOSS.

Section 2626. Perils, remote and proximate.
2627. Loss incurred in rescue from peril.
2628. Excepted perils.
2629. Negligence and fraud.

Perils, remote and proximate.

SEC. 2626. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

Loss incurred in rescue from peril.

SEC. 2627. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

Excepted perils.

SEC. 2628. Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted.

Negligence and fraud.

SEC. 2629. An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents, or others.

ARTICLE X.

NOTICE OF LOSS.

Section 2633. Notice of loss.
2634. Preliminary proofs.
2635. Waivers of defects in notice, etc.
2636. Waiver of delay.
2637. Certificate, when dispensed with.

Notice of loss.

SEC. 2633. In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

Preliminary proofs.

SEC. 2634. When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

Waivers of defects in notice, etc.

SEC. 2635. All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

Waiver of delay.

SEC. 2636. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

Certificate, when dispensed with.

SEC. 2637. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

ARTICLE XI.

DOUBLE INSURANCE.

Section 2641. Double insurance.
2642. Contribution in case of double insurance.

Double insurance.

SEC. 2641. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

Contribution in case of double insurance.

SEC. 2642. In case of double insurance, the several insurers are liable to pay losses thereon as follows:

1. In fire insurance, each insurer must contribute ratably toward the loss, without regard to the dates of the several policies;

2. In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies; no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers upon simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably.

ARTICLE XII.

REINSURANCE.

Section 2646. Reinsurance defined.
2647. Disclosures required.
2648. Reinsurance presumed to be against liability.
2649. Original insured has no interest.

Reinsurance defined.

SEC. 2646. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

Disclosure required.

SEC. 2647. Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

Reinsurance presumed to be against liability.

SEC. 2648. A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

Original insured has no interest.

SEC. 2649. The original insured has no interest in a contract of reinsurance.

CHAPTER II.

MARINE INSURANCE.

ARTICLE I. DEFINITION OF MARINE INSURANCE. [2655.]
II. INSURABLE INTEREST. [2659–2665.]
III. CONCEALMENT. [2669–2672.]
IV. REPRESENTATIONS. [2676–2677.]
V. IMPLIED WARRANTIES. [2681–2688.]
VI. THE VOYAGE AND DEVIATION. [2692–2697.]
VII. LOSS. [2701–2712.]
VIII. ABANDONMENT. [2716–2732.]
IX. MEASURE OF INDEMNITY. [2736–2746.]

ARTICLE I.

DEFINITION OF MARINE INSURANCE.

Section 2655. Marine insurance defined.

Marine insurance defined.

SEC. 2655. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

ARTICLE II.

INSURABLE INTEREST.

Section 2659. Insurable interest in a ship defined.
2660. Interest reduced by bottomry.
2661. Freightage defined.
2662. Insurable interest in expected freightage defined.
2663. Interest in expected freightage defined.
2664. Insurable interest in profits.
2665. Insurable interest of charterer.

Insurable interest in a ship defined.

SEC. 2659. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

Interest reduced by bottomry.

SEC. 2660. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry.

Freightage defined.

SEC. 2661. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods, or those of others.

Insurable interest in expected freightage defined.

SEC. 2662. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against.

Interest in expected freightage defined.

SEC. 2663. The interest mentioned in the last section exists, in the case of a charter party, when the ship has broken ground on the charter voyage, and if a price is to be paid for the carriage of goods when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage.

Insurable interest in profits.

SEC. 2664. One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits.

Insurable interest of charterer.

SEC. 2665. The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss.

ARTICLE III.

CONCEALMENT.

Section 2669. Information must be communicated.
2670. Material information.
2671. Presumption of knowledge of loss.
2672. Concealments which only affect the risk in question.

Information must be communicated.

SEC. 2669. In marine insurance each party is bound to communicate, in addition to what is required by section 2563, all the information which he possesses, material to the risk, except such as is mentioned in section 2564, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry, assumes to disclose.

Material information.

SEC. 2670. In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material.

Presumption of knowledge of loss.

SEC. 2671. A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

Concealments which only affect the risk in question.

SEC. 2672. A concealment in a marine insurance, in respect to any of the following matters, does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed:

1. The national character of the insured;
2. The liability of the thing insured to capture and detention;
3. The liability to seizure from breach of foreign laws of trade;
4. The want of necessary documents; or,
5. The use of false and simulated papers.

ARTICLE IV.

REPRESENTATIONS.

Section 2676. Effect of intentional falsity.
2677. Representation of expectation.

Effect of intentional falsity.

SEC. 2676. If a representation, by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract.

Representation of expectation.

SEC. 2677. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance.

ARTICLE V.

IMPLIED WARRANTIES.

Section 2681. Warranty of seaworthiness.
2682. Same; defined.
2683. At what time same must exist.
2684. Same; requisites of.
2685. Different degrees of same at different stages of the voyage.
2686. Same; during the voyage, exonerates insurer, when.
2687. Same; for purposes of insurance on cargo.
2688. National or neutral papers.

Warranty of seaworthiness.

SEC. 2681. In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

Same; defined.

SEC. 2682. A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy.

At what time same must exist.

SEC. 2683. An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases:

1. When the insurance is made for a specified length of time, the implied warranty is not complied with unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and

2. When the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of trade, is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transshipped be seaworthy at the commencement of its particular voyage.

Same; requisites of.

SEC. 2684. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables and anchors, cordage and sails, food, water, fuel, and lights, and other necessary and proper stores and implements for the voyage.

Different degrees of same at different stages of the voyage.

SEC. 2685. Where different portions of a voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each portion, the ship is seaworthy with reference to that portion.

Same; during the voyage, exonerates insurer, when.

SEC. 2686. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in

repairing the defect exonerates the insurer from liability from any loss arising therefrom.

Same; for purposes of insurance on cargo.

SEC. 2687. A ship which is seaworthy for the purpose of an insurance upon the ship may nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

National or neutral papers.

SEC. 2688. Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE VI.

THE VOYAGE AND DEVIATION.

Section 2692. Voyage insured, how determined.
2693. Course of sailing, how determined.
2694. Deviation defined.
2695. Same; when proper.
2696. Same; when improper.
2697. Same; exonerates insurer.

Voyage insured, how determined.

SEC. 2692. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places.

Course of sailing, how determined.

SEC. 2693. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct, and advantageous.

Deviation defined.

SEC. 2694. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage.

Same; when proper.

SEC. 2695. A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control;

2. When necessary to comply with a warranty, or to avoid a peril whether insured against or not;

3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril;

4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

Same; when improper.

SEC. 2696. Every deviation not specified in the last section is improper.

Same; exonerates insurer.

SEC. 2697. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

ARTICLE VII.

LOSS.

Section 2701. Total or partial.
2702. Partial defined.
2703. Total, actual or constructive.
2704. Actual total defined.
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2706. Presumed actual.
2707. Insurance on cargo, etc., when voyage is broken up.
2708. Cost of reshipment, etc.
2709. When insured is entitled to payment.
2711. Average loss.
2712. Insurance against total loss.

Total or partial.

SEC. 2701. A loss may be either total or partial.

Partial defined.

SEC. 2702. Every loss which is not total is partial.

Total, actual or constructive.

SEC. 2703. A total loss may be either actual or constructive.

Actual total defined.

SEC. 2704. An actual total loss is caused by:

1. A total destruction of the thing insured;

2. The loss of the thing by sinking, or by being broken up;

3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,

4. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured.

Constructive total defined.

SEC. 2705. A constructive total loss is one which gives to a person insured a right to abandon, under section 2717.

Presumed actual.

SEC. 2706. An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.

Insurance on cargo, etc., when voyage is broken up.

SEC. 2707. When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped.

Cost of reshipment, etc.

SEC. 2708. In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured.

When insured is entitled to payment.

SEC. 2709. Upon an actual total loss, a person insured is entitled to payment without notice of abandonment.

SEC. 2710. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873–74, 258), the preceding section was repealed, and for that reason has been omitted.

Average loss.

SEC. 2711. Where it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless, but he is liable for his proportion of all general average loss assessed upon the thing insured.

Insurance against total loss.

SEC. 2712. An insurance confined in terms to an actual total loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured.

ARTICLE VIII.

ABANDONMENT.

Section 2716. Abandonment defined.
2717. By insured, when.
2718. Must be unqualified.
2719. When may be made.
2720. When becomes ineffectual.
2721. How made.
2722. Requisites of notice.
2723. How sustained.
2724. Effect of.
2725. Waiver of.
2726. Agents of the insured become agents of the insurer.
2727. Acceptance of, not necessary.
2728. Acceptance conclusive.
2729. Accepted, irrevocable.
2730. Freightage, effect on.
2731. Refusal to accept, effect of.
2732. Omission of.

Abandonment defined.

SEC. 2716. Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured.

By insured, when.

SEC. 2717. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

1. If more than half thereof in value is actually lost, or would have to be expended to recover it from peril;

2. If it is injured to such an extent as to reduce its value more than one half;

3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances;

4. If the thing insured, being cargo or freightage, the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring the like expense or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned.

Must be unqualified.

SEC. 2718. An abandonment must be neither partial nor conditional.

When may be made.

SEC. 2719. An abandonment must be made within a reasonable time after the information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

When becomes ineffectual.

SEC. 2720. Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

How made.

SEC. 2721. Abandonment is made by giving notice thereof to the insurer, which may be done orally or in writing.

Requisites of notice.

SEC. 2722. A notice of abandonment must be explicit, and must specify the particular cause of the abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

How sustained.

SEC. 2723. An abandonment can be sustained only upon the cause specified in the notice thereof.

Effect of.

SEC. 2724. An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

Waiver of.

SEC. 2725. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

Agents of the insured become agents of the insurer.

SEC. 2726. Upon an abandonment, acts done in good faith by those who were agents of the insured in respect to the thing insured, subsequent to the loss, are at the risk of the insurer and for his benefit.

Acceptance of, not necessary.

SEC. 2727. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer upon his receiving notice of abandonment.

Acceptance conclusive.

SEC. 2728. The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment.

Accepted, irrevocable.

SEC. 2729. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

Freightage, effect on.

SEC. 2730. On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship.

Refusal to accept, effect of.

SEC. 2731. If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured.

Omission of.

SEC. 2732. If a person insured omits to abandon, he may nevertheless recover his actual loss.

ARTICLE IX.

MEASURES OF INDEMNITY.

Section 2736. Valuation, when conclusive.
2737. Liability on partial loss.
2738. Profits.
2739. Valuation apportioned.
2740. Valuation applied to profits.
2741. Estimating loss under an open policy.
2742. Arrival of thing damaged.
2743. Labor and expenses.
2744. General average.
2745. Contribution.
2746. Insurer's liability on partial loss.

Valuation, when conclusive.

SEC. 2736. A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of

either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

Liability on partial loss.

SEC. 2737. A marine insurer is liable upon a partial loss only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured.

Profits.

SEC. 2738. Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

Valuation apportioned.

SEC. 2739. In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

Valuation applied to profits.

SEC. 2740. When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

Estimating loss under an open policy.

SEC. 2741. In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the

fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival;

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

Arrival of thing damaged.

SEC. 2742. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port, of the thing so damaged, bears to the market price it would have brought if sound.

Labor and expenses.

SEC. 2743. A marine insurer is liable for all the expense attendant upon a loss which forces a ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby, such expense, in either case, being in addition to a total loss, if that afterwards occurs.

General average.

SEC. 2744. A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against.

Contribution.

SEC. 2745. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right.

Insurer's liability on partial loss.

SEC. 2746. In the case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, and whether the ship is new or old, a marine insurer is liable for only two thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one half per cent for each month that it has been fastened to the ship.

CHAPTER III.

FIRE INSURANCE.

Section 2753. Alteration increasing risk, effect of.
2754. Alteration not increasing risk, effect of.
2755. Acts of the insured.
2756. Measure of indemnity.

SEC. 2752. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 259), the preceding section was repealed, and for that reason the same has been omitted.

Alteration increasing risk, effect of.

SEC. 2753. An alteration in the condition or use of the thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Alteration not increasing risk, effect of.

SEC. 2754. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Acts of the insured.

SEC. 2755. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of the loss.

Measure of indemnity.

SEC. 2756. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured in the condition in which it was at the time of the injury, but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

Section 2762. Insurance upon life, when payable.
2763. Insurable interest defined.
2764. Assignee, etc., of life policy need have no interest.
2765. Notice of transfer.
2766. Measure of indemnity.

Insurance upon life, when payable.

SEC. 2762. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

Insurable interest defined.

SEC. 2763. Every person has an insurable interest in the life and health:

1. Of himself;

2. Of any person on whom he depends wholly or in part for education or support;

3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,

4. Of any person upon whose life any estate or interest vested in him depends.

Assignee, etc., of life policy need have no interest.

SEC. 2764. A policy of insurance upon life or health may pass by transfer, will, or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

Notice of transfer.

SEC. 2765. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.

Measure of indemnity.

SEC. 2766. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.

TITLE XII.

INDEMNITY.

Section 2772. Defined.
2773. For a future wrongful act, void.
2774. For past wrongful act, except felony, valid.
2775. Extends to acts of agents.
2776. Both joint and several.
2777. Person indemnifying liable jointly or severally with persons indemnified.
2778. Rules for interpreting agreement of indemnity.
2779. When person indemnifying is a surety.
2780. Bail defined.
2781. How regulated.

Defined.

SEC. 2772. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person.

For a future wrongful act, void.

SEC. 2773. An agreement to indemnify a person against an act thereafter to be done is void, if the act be known by such person, at the time of doing it, to be unlawful.

For past wrongful act, except felony, valid.

SEC. 2774. An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.

Extends to acts of agents.

SEC. 2775. An agreement to indemnify against the acts of a certain person applies not only to his acts and their consequences, but also to those of his agents.

Both joint and several.

SEC. 2776. An agreement to indemnify several persons applies to each, unless a contrary intention appears.

Person indemnifying liable jointly or severally with persons indemnified.

SEC. 2777. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act.

Rules for interpreting agreement of indemnity.

SEC. 2778. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the cost of defense against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion;

4. The person indemnifying is bound, on request of the per-

son indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so;

5. If after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

When person indemnifying is a surety.

SEC. 2779. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay.

Bail defined.

SEC. 2780. Upon those contracts in indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

How regulated.

SEC. 2781. The obligations of bail are governed by the statutes especially applicable thereto.

TITLE XIII.

GUARANTY.

CHAPTER I. GUARANTY IN GENERAL. [2787–2825.]
II. SURETYSHIP. [2831–2866.]

CHAPTER I.

GUARANTY IN GENERAL.

ARTICLE I. DEFINITION OF GUARANTY. [2787-2788.]
II. CREATION OF GUARANTY. [2792-2795.]
III. INTERPRETATION OF GUARANTY. [2799-2802.]
IV. LIABILITY OF GUARANTORS. [2806-2810.]
V. CONTINUING GUARANTY. [2814-2815.]
VI. EXONERATION OF GUARANTORS. [2819-2825.]

ARTICLE I.

DEFINITION OF GUARANTY.

Section 2787. Guaranty defined.
2788. Knowledge of principal not necessary to creation of guaranty.

Guaranty defined.

SEC. 2787. A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

Knowledge of principal not necessary to creation of guaranty.

SEC. 2788. A person may become guarantor, even without the knowledge or consent of the principal.

ARTICLE II.

CREATION OF GUARANTY.

Section 2792. Necessity of a consideration.
2793. Guaranty to be in writing, etc.
2794. Engagement to answer for obligation of another, when deemed original.
2795. Guaranty, when binding.

Necessity of a consideration.

SEC. 2792. Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Guaranty to be in writing, etc.

SEC. 2793. Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

Engagement to answer for obligation of another, when deemed original.

SEC. 2794. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation, in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation, in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment, under an execution on a judgment obtained upon the antecedent obligation, or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Guaranty, when binding.

SEC. 2795. A mere offer to guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.

INTERPRETATION OF GUARANTY.

Section 2799. Guaranty of incomplete contract.
2800. Guaranty that an obligation is good or collectible.
2801. Guaranty, when not discharged.
2802. Removal of principal from state equivalent to insolvency.

Guaranty of incomplete contract.

SEC. 2799. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar

contracts at the place where the principal contract is to be performed.

Guaranty that an obligation is good or collectible.

SEC. 2800. A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

Guaranty, when not discharged.

SEC. 2801. A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

Removal of principal from state equivalent to insolvency.

SEC. 2802. In the cases mentioned in section twenty-eight hundred, the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.

LIABILITY OF GUARANTORS.

Section 2806. Guaranty, how construed.
2807. Guarantor, when liable.
2808. Same, on a conditional obligation.
2809. Same; cannot exceed that of the principal.
2810. Guarantor not liable on an illegal contract.

Guaranty, how construed.

SEC. 2806. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

Guarantor, when liable.

SEC. 2807. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

Same, on a conditional obligation.

SEC. 2808. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

Same, cannot exceed that of principal.

SEC. 2809. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

Guarantor not liable on an illegal contract.

SEC. 2810. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.

CONTINUING GUARANTY.

Section 2814. Continuing guaranty defined.
2815. Revocation.

Continuing guaranty defined.

SEC. 2814. A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

Revocation.

SEC. 2815. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.

EXONERATION OF GUARANTORS.

Section 2819. What dealings with debtor exonerate guarantor.
2820. Void promises, effect of.
2821. Rescission of alteration, effect of.
2822. Partial satisfaction, effect of.
2823. Delay of creditor does not discharge guarantor.
2824. Guarantor indemnified by the debtor, not exonerated.
2825. Discharge of principal by act of law does not discharge guarantor.

What dealings with debtor exonerate guarantor.

SEC. 2819. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal in respect thereto are in any way impaired or suspended.

Void promises, effect of.

SEC. 2820. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation, or suspend or impair the remedy, within the meaning of the last section.

Rescission of alteration, effect of.

SEC. 2821. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

Partial satisfaction, effect of.

SEC. 2822. The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

Delay of creditor does not discharge guarantor.

SEC. 2823. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

Guarantor indemnified by the debtor, not exonerated.

SEC. 2824. A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Discharge of principal by act of law does not discharge guarantor.

SEC. 2825. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER II.

SURETYSHIP.

ARTICLE I. WHO ARE SURETIES. [2831–2832.]
II. LIABILITY OF SURETIES. [2836–2840.]
III. RIGHTS OF SURETIES. [2844–2850.]
IV. RIGHTS OF CREDITORS. [2854.]
V. LETTER OF CREDIT. [2859–2866.]

ARTICLE I.

WHO ARE SURETIES.

Section 2831. Surety defined.
2832. Apparent principal may show that he is a surety.

Surety defined.

SEC. 2831. A surety is one who, at the request of another and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

Apparent principal may show that he is a surety.

SEC. 2832. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

ARTICLE II.

LIABILITY OF SURETIES.

Section 2836. Limit of.
2837. Contract of suretyship, by what rules interpreted.
2838. Relation of surety continues notwithstanding recovery of judgment.
2839. Surety, exonerated when.
2840. Surety, exonerated how and to what extent.

Limit of.

SEC. 2836. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

Contract of suretyship, by what rules interpreted.

SEC. 2837. In interpreting the terms of a contract of a suretyship, the same rules are to be observed as in the case of other contracts.

Relation of surety continues notwithstanding recovery of judgment.

SEC. 2838. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

Surety, exonerated when.

SEC. 2839. Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety.

Surety, exonerated how and to what extent.

SEC. 2840. A surety is exonerated:

1. In like manner with a guarantor;

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

ARTICLE III.

RIGHTS OF SURETIES.

Section 2844. Surety has rights of a guarantor.
2845. Surety, what may require of creditor, and to what extent in case of neglect of creditor.
2846. Surety may compel performance, when.
2847. Surety reimbursed by principal, when.
2848. Surety entitled to rights of creditor, when.
2849. Surety entitled to benefit of security held by creditor or co-surety.
2850. Property of principal to be taken first.

Surety has rights of a guarantor.

SEC. 2844. A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

Surety, what may require of creditor, and to what extent in case of neglect of creditor.

SEC. 2845. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

Surety may compel performance, when.

SEC. 2846. A surety may compel his principal to perform the obligation when due.

Surety reimbursed by principal, when.

SEC. 2847. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

Surety entitled to rights of creditor, when.

SEC. 2848. A surety upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

Surety entitled to benefit of security held by creditor, or co-surety.

SEC. 2849. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a co-surety at the time of entering into the contract of suretyship, or acquired by either afterwards, whether the surety was aware of the security or not.

Property of principal to be taken first.

SEC. 2850. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE IV.

RIGHTS OF CREDITORS.

Section 2854. Creditor entitled to benefit of securities held by surety.

Creditor entitled to benefit of securities held by surety.

SEC. 2854. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

ARTICLE V.

LETTER OF CREDIT.

Section 2858. Defined.
2859. How addressed.
2860. Liability of writer.
2861. Either general or special.
2862. General, nature and effect of.
2863. Same, credit by several persons upon.
2864. Letter of credit, a continuing guaranty, when.
2865. Same, liability of writer. Notice required, when.
2866. Same, writer not bound, when.

Defined.

SEC 2858. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

How addressed.

SEC. 2859. A letter of credit may be addressed to several persons in succession.

Liability of writer.

SEC. 2860. The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

Either general or special.

SEC. 2861. A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

General, nature and effect of.

SEC. 2862. A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

Same, credit by several persons upon.

SEC. 2863. Several persons may successively give credit upon a general letter.

Letter of credit, a continuing guaranty, when.

SEC. 2864. If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

Same, liability of writer. Notice required, when.

SEC. 2865. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

Same, writer not bound, when.

SEC. 2866. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

LIEN.

CHAPTER I. LIENS IN GENERAL. [2872–2913.]
II. MORTGAGE. [2920–2972.]
III. PLEDGE. [2986–3011.]
IV. BOTTOMRY. [3017–3029.]
V. RESPONDENTIA. [3036–3040.]
VI. OTHER LIENS. [3046–3060.]
VII. STOPPAGE IN TRANSIT. [3076–3080.]

CHAPTER I.

LIENS IN GENERAL.

ARTICLE I. DEFINITION OF LIENS. [2872–2877.]
II. CREATION OF LIENS. [2881–2884.]
III. EFFECT OF LIENS. [2888–2892.]
IV. PRIORITY OF LIENS. [2897–2899.]
V. REDEMPTION FROM LIENS. [2903–2905.]
VI. EXTINCTION OF LIENS. [2909–2913.]

ARTICLE I.

DEFINITION OF LIENS.

Section 2872. Lien defined.
2873. Liens, general or special.
2874. Lien, general, defined.
2875. Lien, special, defined.
2876. Same; holder of, may enforce payment of amount of prior lien, when.
2877. Certain contracts subject to all provisions of this chapter.

Lien defined.

SEC. 2872. A lien is a charge imposed, in some mode other than by a transfer in trust, upon specific property, by which it is made security for the performance of an act.

Liens, general or special.

SEC. 2873. Liens are either general or special.

Lien, general, defined.

SEC. 2874. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

Lien, special, defined.

SEC. 2875. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

Same; holder of, may enforce payment of amount of prior lien, when.

SEC. 2876. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

Certain contracts subject to all provisions of this chapter.

SEC. 2877. Certain contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

ARTICLE II.

CREATION OF LIENS.

Section 2881. Lien; created how.
2882. Same; arises when.
2883. Same; in future interest.
2884. Same; created by contract, for what purpose

Lien, created how.

SEC. 2881. A lien is created:

1. By contract of the parties;

2. By operation of law.

Same; arises when.

SEC. 2882. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

Same; in future interest.

SEC. 2883. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

Same; created by contract, for what purpose.

SEC. 2884. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

ARTICLE III.

EFFECT OF LIENS.

Section 2888. Lien, or contract for, transfers no title.
2889. Same; what contracts concerning property subject to, void.
2890. Same; creation of, does not imply personal obligation.
2891. Same; extent of.
2892. Same; holder of, not entitled to compensation, except in certain cases.

Lien, or contract for, transfers no title.

SEC. 2888. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

Same; what contracts concerning property subject to, void.

SEC. 2889. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

Same; creation of, does not imply personal obligation.

SEC. 2890. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

Same; extent of.

SEC. 2891. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

Same; holder of, not entitled to compensation except in certain cases.

SEC. 2892. One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 1892 and 1893.

ARTICLE IV.

PRIORITY OF LIENS.

Section 2897. Liens, priority of, how determined, except in certain cases.
2898. Mortgage, priority of, subject to recording laws.
2899. Order of resort to property by holder of prior lien.

Liens, priority of, how determined, except in certain cases.

SEC. 2897. Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

Mortgage, priority of, subject to recording laws.

SEC. 2898. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

Order of resort to property by holder of prior lien.

SEC. 2899. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order on the demand of any party interested:

1. To the things upon which he has an exclusive lien;

2. To the things which are subject to the fewest subordinate liens;

3. In like manner inversely to the number of subordinate liens upon the same thing;

4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:

(1) To the things which have not been transferred since the prior lien was created;

(2) To the things which have been so transferred without a valuable consideration;

(3) To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

ARTICLE V.

REDEMPTION FROM LIEN.

Section 2903. Right to redeem.
2904. Rights of inferior lienor.
2905. Redemption from lien; how made.

Right to redeem.

SEC. 2903. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Rights of inferior lienor.

SEC. 2904. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien;

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

Redemption lien, how made.

SEC. 2905. Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.

EXTINCTION OF LIENS.

Section 2909. Lien, deemed accessory, when.
2910. Lien, extinguished how.
2911. Same.
2912. Same; partial satisfaction does not extinguish.
2913. Restoration of property extinguishes lien.

Lien, deemed accessory, when.

SEC. 2909. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person

is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

Lien, extinguished how.

SEC. 2910. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

Same.

SEC. 2911. A lien is extinguished by the lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

Same; partial satisfaction does not extinguish.

SEC. 2912. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

Restoration of property extinguishes lien.

SEC. 2913. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons, subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration.

CHAPTER II.

MORTGAGE.

ARTICLE I. MORTGAGES IN GENERAL. [2920–2942.]
II. MORTGAGES OF REAL PROPERTY. [2947–2952.]
III. MORTGAGES OF PERSONAL PROPERTY. [2955–2971.]

ARTICLE I.

MORTGAGES IN GENERAL.

Section 2920. Defined.
2921. May be created on property held adversely to mortgagor.
2922. Created, renewed, or extended, how.
2923. Lien of, special, when.
2924. Transfer of interest in property, when deemed a mortgage, and when a pledge.
2925. Transfer made subject to defeasance, nature of may be proved.
2926. Mortgage, lien upon what.
2927. Same; does not entitle mortgagee to possession unless expressly provided.

Section 2928. Same; not a personal obligation.
2929. Same; impairment of mortgagee's security prohibited.
2930. Same; subsequently acquired, inures to mortgagee as security.
2931. Same; foreclosure of right of redemption.
2932. Same; power of sale may be conferred by.
2933. Same; power of attorney to execute, how executed.
2934. Same; assignment of how recorded; effect of such record.
2935. Same; recording assignment of, not notice to mortgagor, when.
2936. Same; assignment of debt secured, carries security.
2938. Same; recorded, discharged how.
2939. Same; on presentation of mortgagee's certificate.
2939*a*. Same; by foreign executors.
2940. Mortgage, discharge of, how recorded.
2941. Mortgagee, duty of, on receiving satisfaction of claim; penalty for failure to execute discharge.
2942. Contracts of bottomry or respondentia, not affected by the provisions of this chapter.

Defined.

SEC. 2920. Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

May be created on property held adversely to mortgagor.

SEC. 2921. A mortgage may be created upon property held adversely to the mortgagor.

Created, renewed, or extended, how.

SEC. 2922. A mortgage can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property.

Lien of, special, when.

SEC. 2923. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

Transfer of interest in property, when deemed a mortgage and when a pledge.

SEC. 2924. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

Transfer made subject to defeasance, nature of may be proved.

SEC. 2925. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice), although the fact does not appear by the terms of the instrument.

Mortgage, lien upon what.

SEC. 2926. A mortgage is a lien upon everything that would pass by a grant of the property.

Same; does not entitle mortgagee to possession unless expressly provided.

SEC. 2927. A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.

Same; not a personal obligation.

SEC. 2928. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

Same; impairment of morgagee's security prohibited.

SEC. 2929. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

Same; subsequently acquired, inures to mortgagee as security.

SEC. 2930. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt, in like manner as if acquired before the execution.

Same; forclosure of right of redemption.

SEC. 2931. A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the Code of Civil Procedure.

Same; power of sale may be conferred by.

SEC. 2932. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

Same; power of attorney to execute, how executed.

SEC. 2933. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

Same; assignment of, how recorded; effect of such record.

SEC. 2934. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as

notice to all persons subsequently deriving title to the mortgage from the assignor.

Same; recording assignment of, not notice to mortgagor, when.

SEC. 2935. When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument.

Same; assignment of debt secured, carries security.

SEC. 2936. The assignment of a debt secured by mortgage carries with it the security.

SEC. 2937. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 261), the preceding section was repealed, and for that reason the same is here omitted.

Same; recorded, discharged, how

SEC. 2938. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this ——— day of ———, in the year ———. A B, Recorder."

Same; on presentation of mortgagee's certificate.

SEC. 2939. A recorded mortgage, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid, satisfied, or discharged.

Same; by foreign executors.

SEC. 2939*a*. Foreign executors and administrators may satisfy mortgages upon the records of any county in this state in the manner provided in section 2939, upon producing and recording in the office of the county recorder of the county in which such mortgage is recorded, a duly certified and authenticated copy of their letters testamentary or of administration,

and which certificate shall also recite that said letters have not been revoked.

Mortgage, discharge of, how recorded.

SEC. 2940. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

Mortgagee, duty of, on receiving satisfaction of claim; penalty for failure to execute discharge.

SEC. 2941. When any mortgagee has been satisfied, the mortgagee, or his assignee, must immediately, on demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgagee to be entered of record, and any mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars.

Contracts of bottomry or respondentia not affected by the provisions of this chapter.

SEC. 2942. Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

Section 2947. What real property subject to.
2948. Same; form of.
2950. Defeasance, to affect grant absolute on its face, must be recorded.
2952. Mortgages, how executed and recorded. Effect of.

What real property subject to.

SEC. 2947. Any interest in real property which is capable of being transferred may be mortgaged.

Same; form of.

SEC. 2948. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the ——— day of ———, in the year ———, by A B, of ———, mortgagor, to C D, of ———, mortgagee, witnesseth:

"That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of ——— dollars, on (or before) the ——— day of ———, in the year ———, with interest thereon (or as security for the payment of an obligation, describing it, etc.). A B."

SEC. 2949. *Omitted.*

COMMISSIONERS' NOTE: The preceding section was repealed by an act approved March 30, 1874 (Amendments 1873-74, 282), and for that reason the same is here omitted.

Defeasance, to affect grant absolute on its face, must be recorded.

SEC. 2950. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee, or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

SEC. 2951. *Omitted.*

COMMISSIONERS' NOTE: By an act approved March 30, 1874 (Amendments 1873-74, 262), the preceding section was repealed, and for that reason the same was here omitted.

Mortgages, how executed and recorded. Effect of.

SEC. 2952. Mortgages of real property may be acknowledged or proved, certified, and recorded, in like manner and with like effect as grants of real property.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

Section 2955. What subject to.
2956. Same; form of.
2957. Same; when void.
2958. Same; of vessels, void, except as to third persons, when.
2959. Same; where to be recorded.
2960. Same; in property in transit, where to be recorded.
2961. Same; of property of common carrier, where to be recorded.
2962. Same; effect of, when recorded in different places.
2963. Same; how executed and recorded. Effect of.
2964. Same; certified copy of may be recorded. Effect of.
2965. Same; personal property exempt from operation of, when.
2966. Same; mortgaged property disposed of as a pledge by mortgagee, when.
2967. Same; how foreclosed.

Section 2968. Same; property subject to, may be taken under attachment or execution.
2969. Same; before taking property officer must pay or tender amount due.
2970. Same; proceeds of sale applied, how.
2971. Same; certain sections not to apply to mortgage on certain ships.
2972. Same; on growing crop, continues after severance, when.

What subject to.

SEC. 2955. Mortgages may be made upon the following personal property, and none other:

1. Locomotives, engines, and other rolling stock of a railroad;
2. Steamboat machinery, the machinery used by machinists, foundrymen, and mechanics;
3. Steam engines and boilers;
4. Mining machinery;
5. Printing presses and material;
6. Professional libraries;
7. Instruments of surveyors, physicians, and dentists;
8. Upholstery, furniture, and household goods;
9. Oil paintings, pictures, and works of art;
10. All growing crops, including grapes and fruit;
11. Vessels of more than five tons burden;
12. Instruments, negatives, furniture, and fixtures of a photograph gallery;
13. The machinery, casks, pipes, tubes, and utensils used in the manufacture or storage of wine, fruit brandy, fruit syrups, or sugar; also, wines, fruit brandy, fruit syrups, or sugar, with the cooperage in which the same are contained;
14. Pianos and organs;
15. Iron and steel safes;
16. Neat cattle, horses, mules, swine, sheep, and goats, and the increase thereof;
17. Harvesters, threshing outfits, hay presses, wagons, farming implements, and the equipments of a livery stable, including buggies, carriages, harness, robes;
18. Abstract systems, books, maps, papers, and slips of searchers of records;
19. Raisins and dried fruits, cured or in process of being cured; also, all boxes, fruit graders, drying trays, and fruit ladders.

Same; form of.

SEC. 2956. A mortgage of personal property may be made in substantially the following form:

"This mortgage, made the ——— day of ———, in the year

———, by A B, of ———, by occupation a ———, mortgagor, to C D, of ———, by occupation a ———, mortgagee, witnesseth:

"That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of ——— dollars, on (or before) the ——— day of ———, in the year ———, with interest thereon (or, as security for the payment of a note or obligation, describing it, etc.) A B."

Same; when void.

SEC. 2957. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless:

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;

2. It is acknowledged or proved, certified and recorded, in like manner as grants of real property.

Same; of vessels, void, except as to third persons, when.

SEC. 2958. A mortgage of any vessel or part of any vessel under the flag of the United States is void as against any person (other than the mortgagor, his heirs, and devisee, and persons having actual notice thereof), unless the mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled.

Same; when to be recorded.

SEC. 2959. A mortgage of personal property must be recorded in the office of the county recorder of the county in which the mortgagor resides, and also of the county in which the property mortgaged is situated, or if the property has been removed to another county, then in the recorder's office of that county.

COMMISSIONERS' NOTE: The concluding clause in this section, as it now stands in the code, viz.: "or to which it may be removed," has been commented on by the supreme court of California in the case of *Fassett* vs. *Wise*, reported on page 317 *et seq.*, Vol. 115, California Reports. Justice Temple, in the majority opinion (see page 320), construed it to mean "or if the property has been removed to another county, then in the recorder's office of that county." The change in the section makes it conform to this decision.

Same; on property in transit, where to be recorded.

SEC. 2960. For the purposes of this article, property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for such transportation, to be taken as

situated in the county in which the mortgagor resides, or where it is intended to be used.

Same; of property of common carrier, where to be recorded.

SEC. 2961. For a like purpose, personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

Same; effect of, when recorded in different places.

SEC. 2962. A single mortgage of personal property, embracing several things of such character or so situated that by the provisions of this article separate mortgages upon them would be required to be recorded in different places, is only valid in respect to the things as to which it is duly recorded.

Same; how executed and recorded. Effect of.

SEC. 2963. Except as it is otherwise in this article provided, mortgages of personal property may be acknowledged, or proved, certified, and recorded in like manner and with like effect as grants of real property; but they must be recorded in books kept for mortgages of personal property exclusively.

Same; certified copy of, may be recorded. Effect of.

SEC. 2964. A certified copy of a mortgage of personal property once recorded may be recorded in any other county, and when so recorded the record thereof has the same force and effect as though it was of the original mortgage.

Same; personal property exempt from operation of, when.

SEC. 2965. When personal property mortgaged is thereafter by the mortgagor removed from the county in which it is situated, it is, except as between the parties to the mortgage, exempted from the operation thereof, unless either:

1. The mortgagee, within thirty days after such removal, causes the mortgage to be recorded in the county to which the property has been removed; or,

2. The mortgagee, within thirty days after such removal, takes possession of the property, as prescribed in the next section.

Same; mortgaged property disposed of as a pledge by mortgagee, when.

SEC. 2966. If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

Same; how foreclosed.

SEC. 2967. A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the title on pledge, or by proceedings under the Code of Civil Procedure.

Same; property subject to, may be taken under attachment or execution.

SEC. 2968. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor.

Same; before taking property officer must pay or tender amount due.

SEC. 2969. Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county clerk or treasurer, payable to the order of the mortgagee.

Same; proceeds of sale applied, how.

SEC. 2970. When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

Same; certain sections not to apply to mortgage on certain ships.

SEC. 2971. Sections 2957, 2959, 2960, 2961, 2962, 2963, 2964, 2965, and 2966 do not apply to any mortgage of a ship under the flag of the United States.

Same; on growing crop, continues after severance, when.

SEC. 2972. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state, or converted into another product, so long as the same remains on the land of the mortgagor. Such lien also continues though such crop, or other product into which it may have been converted, is tortiously removed from the land of mortgagor.

COMMISSIONERS' NOTE: The supreme court, in *Martin* vs. *Thompson*, 63 Cal., page 4, *Wilson* vs. *Prouty*, 7 Id., page 196, and *Bank of Woodland* vs. *Duncan*, 117 Id., page 416, has decided that a "tortious removal" does not divest the mortgaged crop of the lien provided by the provisions of the present section. The amendment proposed thereto strictly follows the construction placed upon it.

CHAPTER III.

PLEDGE.

Section 2986. Pledge defined.
2987. When contract deemed a pledge.
2988. Delivery essential to validity of pledge.
2989. Increase of thing.
2990. Lienor may pledge property to extent of his lien.
2991. Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge.
2992. Pledge-lender defined.
2993. Pledge-holder defined.
2994. When pledge-lender may withdraw property pledged.
2995. Obligations of pledge-holder
2996. Pledge-holder must enforce rights of pledgee.
2997. Obligation of pledgee and pledge-holder for reward.
2998. Gratuitous pledge-holder.
2999. Debtor's misrepresentation of value of pledge.
3000. When pledgee may sell.
3001. When pledgee must demand performance.
3002. Notice of sale to pledgor.
3003. Waiver of notice of sale.
3004. Waiver of demand.
3005. Sale must be by auction.
3006. Pledgee's sale of securities.
3007. Sale on the demand of the pledgor.
3008. Surplus to be paid to pledgor.
3009. Same.
3010. Pledgee's purchase of property pledged.
3011. Pledgee may foreclose right of redemption.

Pledge defined.

SEC. 2986. Pledge is a deposit of personal property by way of security for the performance of another act.

When contract deemed a pledge.

SEC. 2987. Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

Delivery essential to validity of pledge.

SEC. 2988. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge-holder, as hereafter prescribed.

Increase of thing.

SEC. 2989. The increase of property pledged is pledged with the property.

Lienor may pledge property to extent of his lien.

SEC. 2990. One who has a lien upon property may pledge it to the extent of his lien.

Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge.

SEC. 2991. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title to defeat a pledge of the property, made by the other to a pledgee who received the property in good faith, in the ordinary course of business and for value.

Pledge-lender defined.

SEC. 2992. Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

Pledge-holder defined.

SEC. 2993. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge-holder.

When pledge-lender may withdraw property pledged.

SEC. 2994. One who pledges property as security for the obligation of another cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge he cannot withdraw it without his consent.

Obligations of pledge-holder.

SEC. 2995. A pledge-holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge-holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge-holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

Pledge-holder must enforce rights of pledgee.

SEC. 2996. A pledge-holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Obligation of pledgee and pledge-holder for reward.

SEC. 2997. A pledgee, or a pledge-holder for reward, assumes the duties and liabilities of a depositary for reward.

Gratuitous pledge-holder.

SEC. 2998. A gratuitous pledge-holder assumes the duties and liabilities of a gratuitous depositary.

Debtor's misrepresentation of value of pledge.

SEC. 2999. Where a debtor has obtained credit or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

When pledgee may sell.

SEC. 3000. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

When pledgee must demand performance.

SEC. 3001. Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

Notice of sale to pledgor.

SEC. 3002. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

Waiver of notice of sale.

SEC. 3003. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

Waiver of demand.

SEC. 3004. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but cannot waive it in any other manner except by contract.

Sale must be by auction.

SEC. 3005. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

Pledgee's sale of securities.

SEC. 3006. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due.

Sale on the demand of the pledgor.

SEC. 3007. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

Surplus to be paid to pledgor.

SEC. 3008. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

Same.

SEC. 3009. When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

Pledgee's purchase of property pledged.

SEC. 3010. Whenever property pledged is sold at public auction, in the manner provided by section 3005, the pledgee or pledge-holder may purchase said property at such sale.

Pledgee may foreclose right of redemption.

SEC. 3011. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER IV.

BOTTOMRY.

Section 3017. Bottomry defined.
3018. Owner of a ship may hypothecate.
3019. When master may hypothecate ship.
3020. Same
3021. When master may hypothecate freightage.
3022. Rate of interest.
3023. Rights of lender, when no necessity for bottomry existed.
3024. Stipulation for personal liability void.
3025. When money loaned is to be repaid.
3026. When bottomry loan becomes due.
3027. Bottomry lien, how lost.
3028. Preference of bottomry lien over other liens.
3029. Priority of bottomry liens.

Bottomry defined.

SEC. 3017. Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period.

Owner of a ship may hypothecate.

SEC. 3018. The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

When master may hypothecate ship.

SEC. 3019. The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship.

Same.

SEC. 3020. The master of a ship can hypothecate it upon bottomry only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

When master may hypothecate freightage.

SEC. 3021. The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him.

Rate of interest.

SEC. 3022. Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts, but a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.

Rights of lender, when no necessity for bottomry existed.

SEC. 3023. A lender upon a contract of bottomry, made by the master of a ship, as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

Stipulation for personal liability void.

SEC. 3024. A stipulation in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void.

When money loaned is to be repaid.

SEC. 3025. In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

When bottomry loan becomes due.

SEC. 3026. Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

Bottomry lien, how lost.

SEC. 3027. A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time.

Preference of bottomry lien over other liens.

SEC. 3028. A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for supplies or repairs indispensable to the safety of the ship, and a subsequent lien for salvage.

Priority of bottomry liens.

SEC. 3029. Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

CHAPTER V.

RESPONDENTIA.

Section 3036. Defined.
3037. By owner.
3038. By master.
3039. Rate of interest.
3040. Obligations of shipowner.

Defined.

SEC. 3036. Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risks.

By owner.

SEC. 3037. The owner of a cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose.

By master.

SEC. 3038. The master of a ship may hypothecate its cargo upon respondentia only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby.

Rate of interest.

SEC. 3039. The provisions of sections 3022 to 3029 apply equally to loans on respondentia.

Obligations of shipowner.

SEC. 3040. The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay under a contract of respondentia made by the master, in order to discharge its lien.

CHAPTER VI.

OTHER LIENS.

Section 3046. Lien of seller of real property.
3047. When transfer of contract waives lien.
3048. Extent of seller's lien.
3049. Lien of seller of personal property.
3050. Purchaser's lien on real property.
3051. Lien for service.
3052. Liens on personal property.
3053. Lien of factor.
3054. Banker's lien.
3055. Shipmaster's lien.
3056. Seamen's lien.
3057. Officers' lien.
3058. Judgment lien.
3059. Mechanic's lien.
3060. Lien on ships.

Lien of seller of real property.

SEC. 3046. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

When transfer of contract waives lien.

SEC. 3047. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but

a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

Extent of seller's lien.

SEC. 3048. The liens defined in sections 3046 and 3050 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

Lien of seller of personal property.

SEC. 3049. One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

Purchaser's lien on real property.

SEC. 3050. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

Lien for service.

SEC. 3051. Every person who, while lawfully in possession of any article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. And livery or boarding or feed stable proprietors and persons pasturing horses or stock at the request of the owner, or some one having authority from him, have a lien dependent on possession for their compensation in caring for, boarding, feeding, or pasturing such horses or stock.

COMMISSIONERS' NOTE: The words "at the request of the owner, or some one having authority from him," were inserted in the above section. This amendment explains itself, and is deemed fair and just to all parties interested.

Liens on personal property.

SEC. 3052. A person who makes, alters, or repairs any article of personal property, at the request of the owner or legal possessor of the property, or while lawfully in possession thereof renders any service to the owner thereof, by labor or skill necessarily employed for the protection, safe-keeping, or carriage thereof, has a lien upon the same, dependent upon possession, for his reasonable charges for work done and

materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done or services rendered, the person may proceed to sell the property, or so much thereof as may be necessary to satisfy his demand, at public auction, by giving ten days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the county where the work was done or services rendered, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

COMMISSIONERS' NOTE: The proposed amendment to this section consists in extending the lien therein provided to any person who renders any service by labor, skill, or materials furnished, and employed in the necessary protection, safe-keeping, or carriage thereof, while in legal possession of such property, for his reasonable charges for such work done or materials furnished.

Lien of factor.

SEC. 3053. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

Banker's lien.

SEC. 3054. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

Shipmaster's lien.

SEC. 3055. The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

Seamen's lien.

SEC. 3056. The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage, for their wages, which is superior to every other lien.

Officer's lien.

SEC. 3057. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold

it until the process is discharged or satisfied, or a judicial sale of the property is had.

Judgment lien.

SEC. 3058. The lien of a judgment is regulated by the Code of Civil Procedure.

Mechanic's lien.

SEC. 3059. The liens of mechanics for materials and services upon real property; of employés of corporations; of loggers and laborers engaged in logging camps; of persons employed as laborers on threshing machines, and of owners, or persons in charge of stallions, jacks, and bulls; are regulated by the Code of Civil Procedure.

COMMISSIONERS' NOTE: The liens referred to in the section as proposed, except the class first mentioned, are now found in the statutes. It has not been deemed suitable to incorporate them in this code, as they contain matter the proper place for which is in the Code of Civil Procedure, where they will be found under proper headings.

Lien on ships.

SEC. 3060. Debts amounting to at least fifty dollars, contracted for the benefit of ships, are liens in the cases provided by the Code of Civil Procedure.

CHAPTER VII.

STOPPAGE IN TRANSIT.

Section 3076. When consignor may stop goods.
3077. What is insolvency of consignee.
3078. Transit, when ended.
3079. Stoppage, how effected.
3080. Effect of stoppage.

When consignor may stop goods.

SEC. 3076. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

What is insolvency of consignee.

SEC. 3077. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

Transit, when ended.

SEC. 3078. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

Stoppage, how effected.

SEC. 3079. Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

Effect of stoppage.

SEC. 3080. Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

CHAPTER I. NEGOTIABLE INSTRUMENTS IN GENERAL. [3086–3165.]
II. BILLS OF EXCHANGE. [3171–3238.]
III. PROMISSORY NOTES. [3244–3248.]
IV. CHECKS. [3254–3255.]
V. BANK NOTES AND CERTIFICATES OF DEPOSIT. [3261–3262.]

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

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IV. PRESENTMENT FOR PAYMENT. [3130–3137.]
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ARTICLE I.

GENERAL DEFINITIONS.

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3092. May contain a pledge.
3093. What it must not contain.
3094. Date may be inserted by maker.
3095. Different classes of negotiable instruments.

To what instruments this title is applicable.

SEC. 3086. The provisions of this title apply only to negotiable instruments, as defined in this article.

Negotiable instrument defined.

SEC. 3087. A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this article.

Must be for unconditional payment of money.

SEC. 3088. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

Payee defined.

SEC. 3089. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

Instrument may be in alternative.

SEC. 3090. A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provisions of this title.

Date not necessary.

SEC. 3091. A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

May contain a pledge.

SEC. 3092. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

What it must not contain.

SEC. 3093. A negotiable instrument must not contain any other contract than such as is specified in this article.

Date may be inserted by maker.

SEC. 3094. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

Different classes of negotiable instruments.

SEC. 3095. There are six classes of negotiable instruments, namely:

1. Bills of exchange;

2. Promissory notes;
3. Bank notes;
4. Checks;
5. Bonds;
6. Certificates of deposit.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

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Time and place of payment.

SEC. 3099. A negotiable instrument which does not specify the time of payment is payable immediately.

Place of payment not specified.

SEC. 3100. A negotiable instrument which does not specify a place of payment is payable at the residence or place of business of the maker, or wherever he may be found.

Instruments payable to a person or his order, how construed.

SEC. 3101. An instrument otherwise negotiable in form, payable to a person named, but with the words added "or to his order," or "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer.

Unindorsed note, when negotiable.

SEC. 3102. A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts as if payable to the bearer.

Fictitious payee.

SEC. 3103. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

Presumption of consideration.

SEC. 3104. The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration before the maturity of the instrument, and in the ordinary course of business.

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INDORSEMENT.

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3123. Indorsee in due course defined.
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3125. Instrument left blank.

Indorsement defined.

SEC. 3108. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it with his name thereon, to another person, is called an indorser, and his act is called indorsement.

Agreement to indorse.

SEC. 3109. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

When may be made on separate paper.

SEC. 3110. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

Kinds of indorsement.

SEC. 3111. An indorsement may be general or special.

General indorsement defined.

SEC. 3112. A general indorsement is one by which no indorsee is named.

Special indorsement defined.

SEC. 3113. A special indorsement specifies the indorsee.

General indorsement, how made special.

SEC. 3114. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special

one, by writing above it a direction for payment to a particular person.

Destruction of negotiability by indorser.

SEC. 3115. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

Implied warranty of indorser.

SEC. 3116. Every indorser of a negotiable instrument, unless his indorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be;

2. That he has a good title to it;

3. That the signatures of all prior parties are binding upon them;

4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections 3189, 3213, 3248, or 3255.

Indorser, when liable to payee.

SEC. 3117. One who indorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon, as an indorser.

Indorsement without recourse.

SEC. 3118. An indorser may qualify his indorsement with the words "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

Same.

SEC. 3119. Except as otherwise prescribed by the last section, an indorsement, without recourse, has the same effect as any other indorsement.

Indorsee privy to contract.

SEC. 3120. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

SEC. 3121. *Omitted.*

COMMISSIONERS' NOTE: By an act approved July 1, 1874 (Stats. 1873–74, 263), section 3121 was repealed, and for that reason the same has been here omitted.

Effect of want of consideration.

SEC. 3122. The want of consideration for the undertaking of a maker, acceptor, or indorser of a negotiable instrument does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

Indorsee in due course defined.

SEC. 3123. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

Rights of indorsee in due course.

SEC. 3124. An indorsee of a negotiable instrument in due course acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

Instrument left blank.

SEC. 3125. One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank for the purpose of filling afterward, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

Section 3130. Effect of want of demand on principal debtor.
3131. Presentment, how made.
3132. Apparent maturity defined.
3133. Presumptive dishonor of bill payable after sight.
3134. Apparent maturity of bill payable at sight.
3135. Apparent maturity of note.
3136. Same.
3137. Surrender of instrument, when a condition of payment.

Effect of want of demand on principal debtor.

SEC. 3130. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

Presentment, how made.

SEC. 3131. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

1. The instrument must be presented by the holder.

2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there;

3. An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence, or business, of the principal debtor, if it can be found therein;

4. An instrument which does not specify a place for its payment must be presented at the place of residence, or business, of the principal debtor, or wherever he may be found, at the option of the presentor;

5. The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day;

6. If the principal debtor have no place of business, or if his place of business, or residence, cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

Apparent maturity defined.

SEC. 3132. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which, by its terms, it becomes due, or, when that is a holiday, the next business day.

Presumptive dishonor of bill payable after sight.

SEC. 3133. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Apparent maturity of bill payable at sight.

SEC. 3134. The apparent maturity of a bill of exchange payable at sight or on demand, is:

1. If it bears interest, one year after its date;
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Apparent maturity of note.

SEC. 3135. The apparent maturity of a promissory note payable at sight or on demand, is:

1. If it bears interest, one year after its date;
2. If it does not bear interest, six months after its date.

Same.

SEC. 3136. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

Surrender of instrument, when a condition of payment.

SEC. 3137. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,
2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,
3. If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

Section 3141. Dishonor defined.
3142. Notice, by whom given.
3143. Form of notice.
3144. Notice, how served.
3145. Notice, how served after indorser's death.
3146. Notice given in ignorance of death, valid.
3147. Notice, when to be given.
3148. Notice, when to be mailed.
3149. Notice, how given by agent.
3150. Notice, additional time for by indorser.
3151. Notice, effect of.

Dishonor defined.

SEC. 3141. A negotiable instrument is dishonored when it is either not paid, or not accepted, according to its tenor, on presentment for that purpose, or without presentment, where that is excused.

Notice, by whom given.

SEC. 3142. Notice of the dishonor of a negotiable instrument may be given:

1. By a holder thereof;

2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

Form of notice.

SEC. 3143. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

Notice, how served.

SEC. 3144. A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally at any place;

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him;

3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post office most conveniently accessible from the place where the presentment was made and paying the postage thereon.

Notice, how served after indorser's death.

SEC. 3145. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or, if there are none, then to any member of his family who resided with him at his death; or, if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision three of the last section.

Notice given in ignorance of death, valid.

SEC. 3146. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Notice, when to be given.

SEC. 3147. Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

Notice, when to be mailed.

SEC. 3148. When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

Notice, how given by agent.

SEC. 3149. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient fo him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

Notice, additional time for, by indorser.

SEC. 3150. Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

Notice, effect of.

SEC. 3151. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto whose right to give the like notice has not then been lost.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

Section 3155. Notice of dishonor, when excused.
3156. Presentment and notice, when excused.
3157. Same.
3158. Delay, when excused.
3159. Waiver of.
3160. Waiver of protest, effect of.

Notice of dishonor, when excused.

SEC. 3155. Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged;

2. When there is no post office communication between the town of the party by whom the notice should be given and the

town in which the place of residence or business of the party to be charged is situated;

3. When the party to be charged is the same person who dishonors the instrument;

4. When the notice is waived by the party entitled thereto.

Presentment and notice, when excused.

SEC. 3156. Presentment and notice are excused as to any party to a negotiable instrument who informs the holder, within ten days before its maturity, that it will be dishonored.

Same.

SEC. 3157. If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

Delay, when excused.

SEC. 3158. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

Waiver of.

SEC. 3159. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

Waiver of protest, effect of.

SEC. 3160. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

Section 3164. Obligation of party, when extinguished.

Obligation of party, when extinguished.

SEC. 3164. The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general;

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof and entitled by its terms to payment.

SEC. 3165. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874, approved July 1, 1874 (Stats. 1873-74, 264), section 3165 was repealed, and for that reason the same has been here omitted.

CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE I. FORM AND INTERPRETATION. [3171-3177.]
II. DAYS OF GRACE. [3181.]
III. PRESENTMENT FOR ACCEPTANCE. [3185-3189.]
IV. ACCEPTANCE. [3193-3199.]
V. ACCEPTANCE OR PAYMENT FOR HONOR. [3203-3207.]
VI. PRESENTMENT FOR PAYMENT. [3211-3214.]
VII. EXCUSE ON PRESENTMENT AND NOTICE. [3218-3220.]
VIII. FOREIGN BILLS. [3224-3238.]

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

Section 3171. Bill of exchange defined.
3172. Drawee, in case of need.
3173. Bill in parts of a set.
3174. When must be in a set.
3175. Presentment of part of set.
3176. Bill, where payable.
3177. Rights and obligations of drawer.

Bill of exchange defined.

SEC. 3171. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

Drawee, in case of need.

SEC. 3172. A bill of exchange may give the name of any person, in addition to the drawee, to be resorted to in case of need.

Bill in parts of a set.

SEC. 3173. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

When must be in a set.

SEC. 3174. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

Presentment of part of set.

SEC. 3175. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

Bills, where payable.

SEC. 3176. A bill of exchange is payable:

1. At the place where, by its terms, it is made payable;

2. If it specify no place of payment, then at the place to which it is addressed;

3. If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

Rights and obligations of drawer.

SEC. 3177. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument.

ARTICLE II.

Section 3181. Days of grace.

Days of grace.

SEC. 3181. Days of grace are not allowed.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

Section 3185. When may be presented.
3186. How made.
3187. To joint drawees.
3188. To be made to drawee in case of need.
3189. When must be made.

When may be presented.

SEC. 3185. At any time before a bill of exchange is payable the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored.

How made.

SEC. 3186. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

1. The bill must be presented by the holder or his agent;

2. It must be presented on a business day, and within reasonable hours;

3. It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and,

4. The drawee, on such presentment, may postpone his

acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

To joint drawees.

SEC. 3187. Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others.

To be made to drawee in case of need.

SEC. 3188. A bill of exchange which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

When must be made.

SEC. 3189. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

ARTICLE IV.

ACCEPTANCE.

Section 3193. How made.
3194. Holder entitled to, on face of bill.
3195. What sufficient with consent of holder.
3196. By separate instrument.
3197. Promise to accept, when equivalent to.
3198. Cancellation of.
3199. What is admitted by.

How made.

SEC. 3193. An acceptance of a bill must be made in writing, by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words.

Holder entitled to, on face of bill.

SEC. 3194. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

What sufficient, with consent of holder.

SEC. 3195. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper;

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately, without regard to its terms.

By separate instrument.

SEC. 3196. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration.

Promise to accept, when equivalent to.

SEC. 3197. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.

Cancellation of.

SEC. 3198. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

What is admitted by.

SEC. 3199. The acceptance of a bill of exchange admits the signature of a drawer, but does not admit the signature of any indorser to be genuine.

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

Section 3203. When bill may be accepted or paid for honor.
3204. Holder of bill of exchange bound to accept payment for honor.
3205. Acceptance for honor, how made.
3206. How enforced.
3207. Does not excuse notice of dishonor.

When a bill may be accepted or paid for honor.

SEC. 3203. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

Holder of bill of exchange bound to accept payment for honor.

SEC. 3204. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

Acceptance for honor, how made.

SEC. 3205. An acceptor or payor for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

How enforced.

SEC. 3206. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an indorser, after which the acceptor for honor must pay the bill.

Does not excuse notice of dishonor.

SEC. 3207. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

Section 3211. When bill not accepted, where made.
3212. Payable at particular place.
3213. Effect of delay in certain cases.
3214. Effect in other cases.

When bill not accepted, where made.

SEC. 3211. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

Payable at particular place.

SEC. 3212. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

Effect of delay in certain cases.

SEC. 3213. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such present-

ment, the drawer and indorsers are exonerated, unless such presentment is excused.

Effect in other cases.

SEC. 3214. Mere delay in presenting a bill of exchange, or promissory note, payable with interest, at sight or on demand, does not exonerate any party thereto.

COMMISSIONERS' NOTE: The amendment suggested consists in inserting after the word "exchange" the words "or promissory note," thus making the section apply expressly to promissory notes.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

Section 3218. Presentment for acceptance, when excused.
3219. Delay, when excused.
3220. Presentment and notice, when excused.

Presentment for acceptance, when excused.

SEC. 3218. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

Delay, when excused.

SEC. 3219. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

Presentment and notice, when excused.

SEC. 3220. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or, if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

ARTICLE VIII.

FOREIGN BILLS.

Section 3224. Definitions.
3225. Protest necessary.
3226. Protest, by whom made.
3227. Protest, how made.
3228. Protest, where made.
3229. Protest, when to be made.
3230. Protest, when excused.
3231. Protest, notice of, how given.
3232. Protest, waiver of.
3233. Declaration before payment for honor.
3234. Damages allowed on dishonor of foreign bill.
3235. Rate of damages.
3236. Interest on amount of protested bill.
3237. Damages, how estimated.
3238. Same.

Definitions.

SEC. 3224. An inland bill of exchange is one drawn and payable within this state. All others are foreign.

Protest necessary.

SEC. 3225. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

Protest, by whom made.

SEC. 3226. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and, if not, then by any reputable person, in the presence of two witnesses.

Protest, how made.

SEC. 3227. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and, finally, protesting against all the parties to be charged.

Protest, where made.

SEC. 3228. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

Protest, when to be made.

SEC. 3229. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.

Protest, when excused.

SEC. 3230. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

Protest, notice of, how given.

SEC. 3231. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

Protest, waiver of.

SEC. 3232. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser

of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

Declaration before payment for honor.

SEC. 3233. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Damages allowed on dishonor of foreign bill.

SEC. 3234. Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this state, and protested for non-acceptance or non-payment.

Rate of damages.

SEC. 3235. Damages are allowed under the last section upon bills drawn upon any person:

1. If drawn upon any person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill;

2. If drawn upon any person out of this state, but in any of the other states west of the Rocky mountains, five dollars upon each hundred dollars of the principal sum specified in the bill;

3. If drawn upon any person in any of the United States east of the Rocky mountains, ten dollars upon each hundred dollars of the principal sum specified in the bill;

4. If drawn upon any person in any place in a foreign country, fifteen dollars upon each hundred dollars of the principal sum specified in the bill.

Interest on amount of protested bill.

SEC. 3236. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section.

Damages, how estimated.

SEC. 3237. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

Same.

SEC. 3238. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the

value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

Section 3244. Promissory note defined.
3245. Certain instruments deemed to be.
3246. Bill of exchange, when converted into.
3247. Certain sections applicable to.
3248. Effect of delay in presentment.

Promissory note defined.

SEC. 3244. A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

Certain instruments deemed to be.

SEC. 3245. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

Bill of exchange, when converted into.

SEC. 3246. A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

Certain sections applicable to.

SEC. 3247. Chapter I of this title, and sections 3181 and 3214, apply to promissory notes.

Effect of delay in presentment.

SEC. 3248. If a promissory note, payable on demand or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused.

CHAPTER IV.

CHECKS.

Section 3254. Check defined.
3255. Rules applicable to.

Check defined.

SEC. 3254. A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

Rules applicable to.

SEC. 3255. A check is subject to all the provisions of this code concerning bills of exchange, except that:

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby;

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

CHAPTER V.

BANK NOTES.

Section 3261. Bank note negotiable after payment.

Bank note negotiable after payment.

SEC. 3261. A bank note remains negotiable, even after it has been paid by the maker.

SEC. 3262. *Omitted.*

COMMISSIONERS' NOTE: By an act of March, 30, 1874 (Stats. 1873-74, p. ——), section 3262 was repealed, and for that reason the same has been here omitted.

TITLE XVI.

GENERAL PROVISIONS.

Section 3268. Parties may waive provisions of code.

Parties may waive provisions of code.

SEC. 3268. Except where it is otherwise declared, the provisions of the foregoing fifteen titles of this part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

DIVISION FOURTH.

PART I. RELIEF. [3274–3423.]
II. SPECIAL RELATIONS OF DEBTOR AND CREDITOR. [3429–3473.]
III. NUISANCE. [3479–3503.]
IV. MAXIMS OF JURISPRUDENCE. [3509–3543.]

PART I.

RELIEF.

TITLE I. RELIEF IN GENERAL. [3274–3275.]
II. COMPENSATORY RELIEF. [3281–3360.]
III. SPECIFIC AND PREVENTIVE RELIEF. [3366–3423.]

TITLE I.

RELIEF IN GENERAL.

Section 3274. Species of relief.
3275. Relief in case of forfeiture.

Species of relief.

SEC. 3274. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the Civil Code.

Relief in case of forfeiture.

SEC. 3275. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER I. DAMAGES IN GENERAL. [3281–3294.]
II. MEASURE OF DAMAGES. [3300–3360.]

CHAPTER I.

DAMAGES IN GENERAL.

ARTICLE I. GENERAL PRINCIPLES. [3281–3283.]
II. INTEREST AS DAMAGES. [3287–3290.]
III. EXEMPLARY DAMAGES. [3294.]

ARTICLE I.

GENERAL PRINCIPLES.

Section 3281. Person suffering detriment may recover damages.
3282. Detriment defined.
3285. Injuries resulting or probable after suit brought.

Person suffering detriment may recover damages.

SEC. 3281. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages.

Detriment defined.

SEC. 3282. Detriment is a loss or harm suffered in person or property.

Injuries resulting or probable after suit brought.

SEC. 3283. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

ARTICLE II.

INTEREST AS DAMAGES.

Section 3287. Person entitled to recover damages may recover interest thereon.
3288. In actions other than contract.
3289. Limit of rate by contract.
3290. Acceptance of principal waives claim to interest.

Person entitled to recover damages may recover interest thereon.

SEC. 3287. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and

the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

In actions other than contract.

SEC. 3288. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

Limit of rate by contract.

SEC. 3289. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

Acceptance of principal waives claim to interest.

SEC. 3290. Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.

EXEMPLARY DAMAGES.

Section 3294. Exemplary damages, in what cases allowed.

Exemplary damages, in what cases allowed.

SEC. 3294. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

ARTICLE I. DAMAGES FOR BREACH OF CONTRACT. [3300–3319.]
II. DAMAGES FOR WRONGS. [3333–3340.]
III. PENAL DAMAGES. [3344–3348.]
IV. GENERAL PROVISIONS. [3353–3360.]

ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

Section 3300. Measure of.
3301. Damage must be certain.
3302. Breach of contract to pay liquidated sum.
3303. Dishonor of foreign bills of exchange.
3304. Detriment caused by breach of covenant of seisin, defined.
3305. Detriment caused by breach of covenant against incumbrances, defined.
3306. Breach of agreement to convey real property.

Section 3307. Breach of agreement to buy real property.
3308. Breach of agreement to sell personal property not paid for.
3309. Breach of agreement to sell personal property paid for.
3310. Breach of agreement to pay for personal property sold.
3311. Breach of agreement to buy personal property.
3312. Breach of warranty of title to personal property.
3313. Breach of warranty of quality of personal property.
3314. Breach of warranty of quality for special purpose.
3315. Breach of carrier's obligation to receive goods.
3316. Breach of carrier's obligation to deliver.
3317. Carrier's delay.
3318. Breach of warranty of authority.
3319. Breach of promise of marriage.

Measure of.

SEC. 3300. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which in the ordinary course of things would be likely to result therefrom.

Damages must be certain.

SEC. 3301. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

Breach of contract to pay liquidated sum.

SEC. 3302. The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

Dishonor of foreign bills of exchange.

SEC. 3303. For the dishonor of foreign bills of exchange the damages are prescribed by sections 3235, 3237, and 3238.

Detriment caused by breach of covenant of seisin, defined.

SEC. 3304. The detriment caused by the breach of a covenant of "seisin," of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor, or, if the breach is partial only, such proportion of the price as the value of the property effected by the breach bore at the time of the grant to the value of the whole property;

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years;

3. Any expenses properly incurred by the covenantee in defending his possession.

Detriment caused by breach of covenant against incumbrances, defined.

SEC. 3305. The detriment caused by the breach of a covenant against incumbrances, in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

Breach of agreement to convey real property.

SEC. 3306. The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

Breach of agreement to buy real property.

SEC. 3307. The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him.

Breach of agreement to sell personal property not paid for.

SEC. 3308. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

Breach of agreement to sell personal property paid for.

SEC. 3309. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion.

Breach of agreement to pay for personal property sold.

SEC. 3310. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title of which is vested in him, is deemed to be the contract price.

Breach of agreement to buy personal property.

SEC. 3311. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold, pursuant to section three thousand and forty-nine, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section three thousand and forty-nine, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof if the buyer had accepted it.

Breach of warranty of title to personal property.

SEC. 3312. The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner.

Breach of warranty of quality of personal property.

SEC. 3313. The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, or of the discovery of the breach thereof, or when with ordinary care a breach thereof might be discovered by the purchaser, if it had been complied with, over its actual value at that time.

COMMISSIONERS' NOTE: The decision of the supreme court in *Shearer* vs. *Park Nursery Company*, 103 Cal. 419, has suggested this amendment. Thus amended the section would, adopting the language of the supreme court, "have a uniformly just effect."

Breach of warranty of quality for special purpose.

SEC. 3314. The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

Breach of carrier's obligation to receive goods.

SEC. 3315. The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is deemed to be the difference between the amount which he had

a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

Breach of carrier's obligation to deliver.

SEC. 3316. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

Carrier's delay.

SEC. 3317. The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

Breach of warranty of authority.

SEC. 3318. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

Breach of promise of marriage.

SEC. 3319. The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

ARTICLE II.

DAMAGES FOR WRONGS.

Section 3333. Breach of obligation other than contract.
3334. Wrongful occupation of real property.
3335. Willful holding over.
3336. Conversion of personal property.
3337. Same.
3338. Damages of lienor.
3339. Seduction.
3340. Injuries to animals.
3341. Same.

Breach of obligation other than contract.

SEC. 3333. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise

expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

Wrongful occupation of real property.

SEC. 3334. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 3335, 3344, and 3345 of this code, or section 1174 of the Code of Civil Procedure, is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

Willful holding over.

SEC. 3335. For willfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

Conversion of personal property.

SEC. 3336. The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of the conversion, with the interest from that time; or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party;

2. A fair compensation for the time and money properly expended in pursuit of the property.

Same.

SEC. 3337. The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Damages of lienor.

SEC. 3338. One having a mere lien on personal property cannot recover greater damages for its conversion from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 3336 for loss of time and expenses.

Seduction.

SEC. 3339. The damages for seduction rest in the sound discretion of the jury.

Injuries to animals.

SEC. 3340. For wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

Same.

SEC. 3341. The owner, possessor, or harborer of any dog, or other animal that shall kill, worry, or wound any horses, mules, neat cattle, swine, sheep, or angora or cashmere goats, shall be liable to the owner of the same for the damages and costs of suit, to be recovered before any court of competent jurisdiction.

1. In the prosecution of actions under this chapter, it shall not be necessary for the plaintiff to show that the owner, possessor or harborer of such dog or other animal had knowledge of the fact that such dog or other animal would kill or wound horses, mules, neat cattle, sheep, or goats.

2. Any person, on finding any dog or dogs not on the premises of its owner or possessor worrying, wounding, or killing any horses, mules, neat cattle, sheep, angora or cashmere goats, may at the time of so finding said dog or dogs, kill the same, and the owner or owners thereof shall sustain no action for damages against any person so killing such dog or dogs.

COMMISSIONERS' NOTE: If there is any necessity for the protection afforded to sheep and goats by this section a like necessity exists to extend same to horses, mules, neat cattle, and swine; hence the amendment proposed.

ARTICLE III.

PENAL DAMAGES.

Section 3344. Failure to quit, after notice.
3345. Tenant willfully holding over.
3346. Injuries to trees, etc.
3346*a* Liability for setting fire to woods; negligence.
3347. Injuries inflicted in a duel.
3348. Omitted.

Failure to quit, after notice.

SEC. 3344. If any tenant give notice of his intention to quit the premises, and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

Tenant willfully holding over.

SEC. 3345. If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one months' notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

Injuries to trees, etc.

SEC. 3346. For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

Liability for setting fire to woods; negligence.

SEC. 3346*a*. Every person setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured.

COMMISSIONERS' NOTE: This is section 3344 of the Political Code, which is transferred to its proper place in Civil Code, and remembered as section 3346*a*.

Injuries inflicted in a duel.

SEC. 3347. If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

SEC. 3348. *Omitted.*

COMMISSIONERS' NOTE: The commissioners recommend the repeal of this section, deeming it inexpedient and impolitic.

ARTICLE IV.

GENERAL PROVISIONS.

Section 3353. Value, how estimated in favor of seller.
3354. Value, how estimated in favor of buyer.
3355. Property of peculiar value.
3356. Value of thing in action.
3357. Damages allowed in this chapter, exclusive of others.
3358. Limitation of damages.
3359. Damages to be reasonable.
3360. Nominal damages.

Value, how estimated in favor of seller.

SEC. 3353. In estimating damages, the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

Value, how estimated in favor of buyer.

SEC. 3354. In estimating damages, except as provided by sections 3355 and 3356, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his posession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

Property of peculiar value.

SEC. 3355. Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

Value of thing in action.

SEC. 3356. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

Damages allowed in this chapter, exclusive of others.

SEC. 3357. The damages prescribed by this chapter are exclusive of the exemplary damages and interest, except where those are expressly mentioned.

Limitation of damages.

SEC. 3358. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in sections 3319, 3339, and 3340.

Damages to be reasonable.

SEC. 3359. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to

unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

Nominal damages.

SEC. 3360. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

CHAPTER I. GENERAL PRINCIPLES. [3366–3369.]
II. SPECIFIC RELIEF. [3375–3414.]
III. PREVENTIVE RELIEF. [3420–3423.]

CHAPTER I.

GENERAL PRINCIPLES.

Section 3366. Specific relief, when allowed.
3367. Specific relief, how given.
3368. Preventive relief, how given.
3369. Not to enforce penalty, etc.

Specific relief, when allowed.

SEC. 3366. Specific or preventive relief may be given as provided by the laws of this state.

COMMISSIONERS' NOTE: The amendment suggested to this section consists of striking out the words "in the cases specified in this title, and in no others," and inserting in lieu thereof the words, "as provided by the laws of this state," thereby enlarging the scope of the section.

Specific relief, how given.

SEC. 3367. Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant;

2. By compelling a party himself to do that which ought to be done;

3. By declaring and determining the rights of parties, otherwise than by an award of damages.

Preventive relief, how given.

SEC. 3368. Preventive relief is given by prohibiting a party from doing that which ought not to be done.

Not to enforce penalty, etc.

SEC. 3369. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty, or forfeiture, in any case.

CHAPTER II.

SPECIFIC RELIEF.

ARTICLE I. POSSESSION OF REAL PROPERTY. [3375.]
II. POSSESSION OF PERSONAL PROPERTY. [3379-3380.]
III. SPECIFIC PERFORMANCE OF OBLIGATIONS. [3384-3395.]
IV. REVISION OF CONTRACTS. [3399-3402.]
V. RESCISSION OF CONTRACTS. [3406-3408.]
VI. CANCELLATION OF INSTRUMENTS. [3412-3414.]

ARTICLE I.

POSSESSION OF REAL PROPERTY.

Section 3375. Judgment for possession or title.

Judgment for possession or title.

SEC. 3375. A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

Section 3379. Judgment for delivery.
3380. When holder may be compelled to deliver.

Judgment for delivery.

SEC. 3379. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.

When holder may be compelled to deliver.

SEC. 3380. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

Section 3384. In what cases compelled.
3386. Cannot be compelled unless right mutual.
3387. Distinction between real and personal property.
3388. Contract signed by one party only may be enforced by other.
3389. Liquidation of damages not a bar to specific performance.

Section 3390. What cannot be specifically enforced.
3391. What parties cannot be compelled to perform.
3392. What parties cannot have specific performance in their favor.
3394. Agreement to sell property by one who has defective title.
3395. Relief against parties claiming under person bound to perform.

In what cases compelled.

SEC. 3384. Except as otherwise provided in this article, specific performance of an obligation may be compelled.

SEC. 3385. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874 (Amendments 1873–74, 267), section 3385 was repealed, and for that reason the same has been here omitted.

Cannot be compelled unless right mutual.

SEC. 3386. Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

Distinction between real and personal property.

SEC. 3387. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

Contract signed by one party only may be enforced by other.

SEC. 3388. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

Liquidation of damages not a bar to specific performance.

SEC. 3389. A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

What cannot be specifically enforced.

SEC. 3390. The following obligations cannot be specifically enforced:

1. An obligation to render personal service;
2. An obligation to employ another in personal service;

3. An agreement to submit a controversy to arbitration;

4. An agreement to perform an act which the party has not power lawfully to perform when required to do so;

5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

What parties cannot be compelled to perform.

SEC. 3391. Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;

2. If it is not, as to him, just and reasonable;

3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

What parties cannot have specific performance in their favor.

SEC. 3392. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

SEC. 3393. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874, in effect July 1, 1874 (Stats. 1873-74), section 3393 was repealed, and for that reason the same has been here omitted.

Agreement to sell property by one who has defective title.

SEC. 3394. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

Relief against parties claiming under person bound to perform.

SEC. 3395. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.

REVISION OF CONTRACTS.

Section 3399. When contract may be revised.
3400. Presumption as to intent of parties.
3401. Principles of revision.
3402. Enforcement of revised contract.

When contract may be revised.

SEC. 3399. When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Presumption as to intent of parties.

SEC. 3400. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of revision.

SEC. 3401. In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Enforcement of revised contract.

SEC. 3402. A contract may be first revised and then specifically enforced.

ARTICLE V.

RESCISSION OF CONTRACTS.

Section 3406. When rescission may be adjudged.
3407. Rescission for mistake.
3408. Court may require party rescinding to do equity.

When rescission may be adjudged.

SEC. 3406. The rescission of a written contract may be adjudged, on the application of a party aggrieved:

1. In any of the cases mentioned in section 1689; or,
2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,
3. When the public interest will be prejudiced by permitting it to stand.

Rescission for mistake.

SEC. 3407. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Court may require party rescinding to do equity.

SEC. 3408. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

Section 3412. When may be ordered.
3413. Instrument obviously void.
3414. Cancellation in part.

When may be ordered.

SEC. 3412. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

Instrument obviously void.

SEC. 3413. An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section.

Cancellation in part.

SEC. 3414. Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

CHAPTER III.

PREVENTIVE RELIEF.

Section 3420. Relief, how granted.
3421. Provisional injunctions, how regulated.
3422. Injunction, when allowed.
3423. Injunction, when not allowed.

Relief, how granted.

SEC. 3420. Preventive relief is granted by injunction, provisional or final.

Provisional injunctions, how regulated.

SEC. 3421. Provisional injunctions are regulated by the Code of Civil Procedure.

Injunction, when allowed.

SEC. 3422. Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;

2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings;

4. Where the obligation arises from a trust.

Injunction, when not allowed.

SEC. 3423. An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

2. To stay proceedings in a court of the United States;

3. To stay proceedings in another state upon a judgment of a court of that state;

4. To prevent the execution of a public statute by officers of the law, for the public benefit;

5. To prevent the breach of a contract, the performance of which would not be specifically enforced;

6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession;

7. To prevent a legislative act by a municipal corporation.

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I. GENERAL PRINCIPLES. [3429–3433.]
II. FRAUDULENT INSTRUMENTS AND TRANSFERS. [3439–3442.]
III. ASSIGNMENTS FOR BENEFIT OF CREDITORS. [3449–3473.]

TITLE I.

GENERAL PRINCIPLES.

Section 3429. Debtor defined.
3430. Creditor defined.
3431. Contracts of debtor are valid.
3432. Payments in preference.
3433. Relative rights of different creditors.

Debtor defined.

SEC. 3429. A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

Creditor defined.

SEC. 3430. A creditor, within the meaning of this title, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

Contracts of debtor are valid.

SEC. 3431. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

Payments in preference.

SEC. 3432. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

Relative rights of different creditors.

SEC. 3433. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort

to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

Section 3439. Transfers, etc., with intent to defraud creditors.
3440. Certain transfers presumed fraudulent.
3441. Creditor's rights must be judicially ascertained.
3442. Question of fraud, how determined.

Transfers, etc., with intent to defraud creditors.

SEC. 3439. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Certain transfers presumed fraudulent.

SEC. 3440. Every transfer of personal property, other than a thing in action, or a ship or cargo at sea or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers and incumbrancers in good faith subsequent to the transfer; *provided, however*, that the provisions of this section shall not apply to the transfers of wines in the wineries or wine cellars of the makers or owners thereof, or other persons having possession, care, and control of the same, and the pipes, casks, and tanks in which the said wines are contained, which transfers shall be made in writing, and certified and acknowledged and verified in the same form as pro-

vided for mortgages of personal property, and which shall be recorded in the book of miscellaneous records in the office of the county recorder of the county in which the same are situated.

Creditor's rights must be judicially ascertained.

SEC. 3441. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

Question of fraud, how determined.

SEC. 3442. In all cases arising under section 1227, or under the provisions of this title, except as otherwise provided in section 3440, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration; *provided, however*, that any transfer or incumbrance of property made or given voluntarily, or without a valuable consideration, by a party while insolvent or in contemplation of insolvency, shall be fraudulent, and void as to existing creditors.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

Section 3449. When debtor may execute assignment.
3450. Insolvency defined.
3451. Certain transfers not affected.
3452. What debts may be secured.
3457. Assignment, when void.
3458. The instrument of assignment, how executed.
3459. Compliance with provisions of last section necessary to validity of assignment.
3460. Assignee takes, subject to rights of third parties.
3461. Inventory required.
3462. Verification of inventory.
3463. Recording assignment and filing inventory.
3464. Same.
3465. Effect of omitting to record.
3466. Assignment of real property.
3467. Bond of assignees.
3468. Conditions of disposal and conversion.
3469. Accountings.
3470. Property exempt.
3471. Compensation.
3472. Assignees protected for acts done in good faith.
3473. Assent of creditor necessary to modification of assignment.

When debtor may execute assignment.

SEC. 3449. An insolvent debtor may, in good faith, execute an assignment of property in trust for the satisfaction of his

creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this code relative to trusts and fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations, or by other specific classes or persons. Every such assignment shall contain a list of the names of the creditors of the assignor, and their places of residence and amounts of their respective demands, and the amounts and nature of any security therefor, and shall, subject to the other provisions of this section, be made to the sheriff of the county, or city and county, wherein the assignor resides, if the assignor resides within this state; or in case the assignor resides out of this state, then to the sheriff of the county, or city and county, wherein the property assigned, or some of it, is situated; but when the assignor resides out of the state, an assignment made as herein provided may, by its terms, transfer any property of the assignor in this state. The sheriff shall forthwith take possession of all the property so assigned to him, and keep the same till delivered by him, as hereinafter provided. When the assignment has been made, as herein provided, the sheriff shall immediately, by mail, notify the creditors named in the assignment, at their places of residence as given therein, to meet at his office on a day and hour to be appointed by him, of not less than eight nor more than ten days from the date of the delivery of the assignment to him, for the purpose of electing one or more assignees, as they may determine, in the place and stead of the said sheriff in the premises, and shall also publish a notice of such meeting, and the purpose thereof, at least once before such meeting, in some newspaper published in his county, or city and county. The notice so to be mailed shall also contain a statement of the amount of the demand of the creditor, and the amount and nature of any security therefor, as set forth in the assignment; and if any creditor shall not find the amount of his claim to be correctly so stated, he may file with said sheriff, at or before such meeting, a statement, under oath, of his demand, and such statement shall, for the purpose of voting as hereinafter provided, be accepted by said sheriff as correct; and when no such statement is filed, the statement of amount as set forth in the assignment shall be accepted by the sheriff as correct. No creditor having a mortgage or pledge of real or personal property of the debtor, or lien thereon, for securing the payment of a debt owing to him from the debtor, shall be allowed to vote any part of his claim at such meeting of creditors, unless he shall have first conveyed, released,

or delivered up his said security to said sheriff, for the benefit of all creditors of said assignor. At such meeting the sheriff shall preside, and a majority in amount of demands present or represented by proxy shall control all questions and decisions. The creditors may adjourn such meeting from time to time, and may vote on all questions, either in person or by proxy signed and acknowledged before any officer authorized to take acknowledgments, and filed with the sheriff. At such a meeting, or any adjournment thereof, the creditors may elect one or more assignees from their own number, in the place and stead of the sheriff, and the person or persons so elected shall afterwards be the assignee or assignees under the provisions of this title; and the sheriff, by transfer in writing, acknowledged as required by section 3458, shall at once assign to such elected assignee or assignees, upon the trusts in this title provided, all the property so assigned to him, and deliver possession thereof. All recitals in such assignment by said sheriff of notices of such meeting, and the holding thereof, and of the due election of such assignee or assignees, shall be prima facie proof of the facts recited. The sheriff shall, before the delivery of such assignment, be paid the expenses incurred by him, and fees in such amount as would by law be collectible if the property assigned had been levied upon and safely kept under attachment. Thereupon, and after the record of such last named assignment, as in this title provided, such elected assignee or assignees shall take, and hold, and dispose of all such property and its proceeds, upon the trusts and conditions and for the purposes in this title provided.

Insolvency defined.

SEC. 3450. A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means as they become due.

Certain transfers not affected.

SEC. 3451. The provisions of this title do not prevent a person residing in another state or country from making there, in good faith, and without intent to evade the laws of this state, a transfer of property situated within it; but such person cannot make a general assignment of property situated in this state for the satisfaction of all his creditors, except as in this title provided; nor do the provisions of this title affect the power of a person, although insolvent, and whether residing within or without this state, to transfer property in this state, in good faith to a particular creditor, for the purpose of pay-

ing or securing the whole or part of a debt owing to such creditor, whether in his own right or otherwise.

What debts may be secured.

SEC. 3452. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

SEC. 3453. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874 (Stats. 1873–74), in effect July 1, 1874, section 3453 was repealed, and for that reason the same has been here omitted.

SEC. 3454. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874 (Stats. 1873–74, 267), section 3454 was repealed, and for that reason the same has been here omitted.

SEC. 3455. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874 (Stats. 1873–74, 267), section 3455 was repealed, and for that reason the same has been here omitted.

SEC. 3456. *Omitted.*

COMMISSIONERS' NOTE: By an act of March 30, 1874 (Stats. 1873–74, 267), section 3456 was repealed, and for that reason the same has been here omitted.

Assignment, when void.

SEC. 3457. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

1. If it give a preference of one debt or class of debts over another;

2. If it tend to coerce any creditor to release or compromise his demand;

3. If it provide for the payment of any claim known to the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor;

4. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid;

5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

6. If it exempt him from liability for neglect of duty or misconduct

The instrument of assignment, how executed.

SEC. 3458. An assignment for the benefit of creditors must be in writing subscribed by the assignor, or by his agent thereto authorized in writing, and the transfer by the sheriff must also be in writing, subscribed by the sheriff in his official capacity. Both such assignment and such transfer must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and be recorded as required by sections 3463 and 3464; but recording in one county constitutes a compliance with the following section.

Compliance with provisions of last section necessary to validity of assignment.

SEC. 3459. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

Assignee takes, subject to the rights of third parties.

SEC. 3460. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

Inventory required.

SEC. 3461. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 3463, a full and true inventory, showing:

1. All the creditors of the assignor;

2. The place of residence of each creditor, if known to the assignor; or if not known, that fact must be stated;

3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise.

4. The true consideration of the liability in each case, and the place where it arose;

5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

6. All property of the assignor at the date of the assignment, which is exempt by law from the execution;

7. All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

Verification of inventory.

SEC. 3462. An affidavit must be made by every assignor executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true according to the best of such assignor's knowledge and belief. If the assignor neglects or refuses to make and file such inventory and affidavit within said twenty days, the assignment shall not, for that reason, be affected in any way, but in that event the assignee or assignees elected by the creditors shall within twenty days thereafter make and file, in the office of the county recorder where the assignment is first recorded, a verified inventory of all assets received by them; and such assignee or assignees may at any time, or from time to time, after the transfer to them by the sheriff, by petition to the superior court of the county, or city and county, where the assignment is first recorded, cause the assignor, by order or citation, to appear before said court, or a commissioner, or referee to be appointed by it, at a time and place within the county, or city and county, to be designated in the order or citation, to be examined touching the matters mentioned in section 3461, and any other matters relative to the assignment, and to have with him all books of account, vouchers, and papers relating to the assigned property; and such court may, by its order, require the surrender to such assignee or assignees of such books, vouchers, and papers, to be by them retained until their trust is fully completed and performed.

Recording assignment and filing inventory.

SEC. 3463. An assignment for the benefit of creditors must be recorded, and the inventory required by section 3461 filed with the county recorder of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this state, with the recorder of the county in which his principal place of business was then situated; or if he had not then a residence or place of business in this state, with the recorder of the county in which the principal part of the assigned property was then situated.

Same.

SEC. 3464. If an assignment for the benefit of creditors is executed by more than one assignor, it may be recorded, and a copy of the inventory required by section 3461 may be filed with the recorder of the county in which any of the assignors resided at its date, or in which any of them, not then residing in this state, had then a place of business.

Effect of omitting to record.

SEC. 3465. An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers, and incumbrancers in good faith, and for value, unless it is recorded as provided in this title, and unless either the inventory required by section 3461, or the inventory required of the assignee, or assignees, by section 3462, is filed in the manner provided in this title and within the time designated.

Assignment of real property.

SEC. 3466. Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of Article IV of the chapter on recording transfers, as well as to those of this title.

Bond of assignees.

SEC. 3467. No bond shall be given by the sheriff, but he shall be liable on his official bond for the care and custody of the property while in his possession. Within forty days after date of the transfer by the sheriff, the assignee must enter into a bond to the people of this state in such amount as may be fixed by a judge of the superior court of the county, or city and county, in which an inventory in accordance with the provisions of this title is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the inventory; and any assignee failing to comply with the provisions of this section, may be removed by the above named superior court on petition of the assignor, or any creditor, and his successor appointed by such court.

Conditions of disposal and conversion.

SEC. 3468. Until a verified inventory has been made and filed, either by the assignor or assignee, as required by the provisions of this title, and the assignee has given the bond required by the last section, such assignee has no authority to dispose of the property of the estate, or any part of it (except in the case of perishable property, which in his discretion he may dispose of at any time, and receive the proceeds of sale thereof); nor has he power to convert the property, or the preceeds of any sale of perishable property, to the purposes of the trust. Within ten days after the filing of his bond, the assignee must commence the publication (and such publication shall continue at least once a week for four weeks), in some

newspaper published in the county, or city and county, where the inventory is filed, of a notice to creditors of the assignor, stating the fact and date of the assignment, and requiring all persons having claims against the assignor to exhibit them, with the necessary vouchers, and verified by the oath of the creditor, to the assignee, at his place of residence or business, to be specified in the notice; and he shall also, within ten days after the first publication of said notice, mail a copy of such notice to each creditor whose name is given in the instrument of assignment, at the address therein given. After such notice is given, a copy thereof, with affidavit of due publication and mailing, must be filed with the county recorder with whom the inventory has been filed, which affidavit shall be prima facie evidence of the facts stated therein. At any time, or from time to time, after the expiration of thirty days from the first publication of said notice (*provided*, the same shall also have been mailed as in this section provided), the assignee may, in his discretion, declare and pay dividends to the creditors whose claims have been presented and allowed. No dividend already declared shall be disturbed by reason of claims being subsequently presented and allowed; but the creditor presenting such claim shall be entitled to a dividend equal to the per cent already declared and paid, before any further dividend is made; *provided*, *however*, that there be assets sufficient for that purpose; *and provided*, that the failure to present such claim shall not have resulted from his own neglect, and he shall attach to such claim a statement, under oath, showing fully why the same was not before presented. When a creditor has a mortgage or pledge of real or personal property of the debtor, or a lien thereon, for securing the payment of a debt owing to him from the debtor, and shall not have conveyed, released, or delivered up such security to the sheriff, as provided for by section 3449 of this code, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such mortgage, pledge, or lien, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the superior court of the county in which the assignment is made shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be permitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess, or he may sell the property, subject to the

claim of the creditor thereon; and in either case the assignee and creditor, respectively shall, execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor shall not be allowed to prove any part of his debt.

Accountings.

SEC. 3469. After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the superior court of the county where the accompanying inventory was filed, in the manner prescribed by the insolvent laws of this state.

Property exempt.

SEC. 3470. Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

Compensation.

SEC. 3471. The elected assignee or assignees for the benefit of creditors shall be entitled to the same commissions on assignments heretofore and hereafter made as are allowed by law to the assignees in insolvency, and the assignment cannot grant more. Such assignee or assignees shall also be entitled to all necessary expenses in the management of their trust.

Assignees protected for acts done in good faith.

SEC. 3472. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

Assent of creditor necessary to modification of assignment.

SEC. 3473. An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the sheriff, or a transfer by the sheriff to the elected assignee or assignees which has been executed and recorded, cannot afterwards be modified or canceled by the parties without the consent of the assignor and of every creditor affected thereby.

Insolvency proceedings, how regulated.

SEC. 3474. Proceedings in insolvency are regulated by the Code of Civil Procedure.

COMMISSIONERS' NOTE: Assignments for the benefit of creditors and proceedings in insolvency might properly be regulated under one title were it not for the fact that the procedure necessary to give the latter effect is so extensive as to almost change the scope of this code. It has, for that reason, been incorporated in the Code of Civil Procedure.

PART III.

NUISANCE.

TITLE I. GENERAL PRINCIPLES. [3479–3484.]
II. PUBLIC NUISANCES. [3490–3495.]
III. PRIVATE NUISANCES. [3501–3503.]

TITLE I.

GENERAL PRINCIPLES.

Section 3479. Nuisance defined.
3480. Public nuisance defined.
3481. Private nuisance defined.
3482. What is not deemed a nuisance.
3483. Successive owners.
3484. Abatement does not preclude action.

Nuisance defined.

SEC. 3479. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisane.

Public nuisance defined.

SEC. 3480. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Private nuisance defined.

SEC. 3481. Every nuisance not included in the definition of the last section is private.

What is not deemed a nuisance.

SEC. 3482. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

Successive owners.

SEC. 3483. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such prop-

erty, created by a former owner, is liable therefor in the same manner as the one who first created it.

Abatement does not preclude action.

SEC. 3484. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

TITLE II.

PUBLIC NUISANCES.

Section 3490. Lapse of time does not legalize.
3491. Remedies against public nuisance.
3492. What remedies regulated by the Penal Code.
3493. Private person maintain action, when.
3494. Abatement, by whom.
3495. Abatement, how effected.

Lapse of time does not legalize.

SEC. 3490. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Remedies against public nuisance.

SEC. 3491. The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

What remedies regulated by the Penal Code.

SEC. 3492. The remedy by indictment or information is regulated by the Penal Code.

Private person may maintain action, when.

SEC. 3493. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

Abatement, by whom.

SEC. 3494. A public nuisance may be abated by any public body or officer authorized thereto by law.

Abatement, how effected.

SEC. 3495. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

TITLE III.

PRIVATE NUISANCES.

Section 3501. Remedies for.
3502. Abatement, how effected.
3503. When notice is required.

Remedies for.

SEC. 3501. The remedies against a private nuisance are:
1. A civil action; or,
2. Abatement.

Abatement, how effected.

SEC. 3502. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

Where notice is required.

SEC. 3503. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART IV.

MAXIMS OF JURISPRUDENCE.

SEC. 3509. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

SEC. 3510. When the reason of a rule ceases, so should the rule itself.

SEC. 3511. Where the reason is the same, the rule should be the same.

SEC. 3512. One must not change his purpose to the injury of another.

SEC. 3513. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

SEC. 3514. One must so use his own rights as not to infringe upon the rights of another.

SEC. 3515. He who consents to an act is not wronged by it.

SEC. 3516. Acquiescence in error takes away the right of objecting to it.

SEC. 3517. No one can take advantage of his own wrong.

SEC. 3518. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

SEC. 3519. He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

SEC. 3520. No one should suffer by the act of another.

SEC. 3521. He who takes the benefit must bear the burden.

SEC. 3522. One who grants a thing is presumed to grant also whatever is essential to its use.

SEC. 3523. For every wrong there is a remedy.

SEC. 3524. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

SEC. 3525. Between rights otherwise equal the earliest is preferred.

SEC. 3526. No man is responsible for that which no man can control.

SEC. 3527. The law helps the vigilant before those who sleep on their rights.

SEC. 3528. The law respects form less than substance.

SEC. 3529. That which ought to have been done is to be regarded as done in favor of him to whom, and against him from whom, performance is due.

SEC. 3530. That which does not appear to exist is to be regarded as if it did not exist.

SEC. 3531. The law never requires impossibilities.

SEC. 3532. The law neither does nor requires idle acts.

SEC. 3533. The law disregards trifles.

SEC. 3534. Particular expressions qualify those which are general.

SEC. 3535. Contemporaneous exposition is in general the best.

SEC. 3536. The greater contains the less.

SEC. 3537. Superfluity does not vitiate.

SEC. 3538. That is certain which can be made certain.

SEC. 3539. Time does not confirm a void act.

SEC. 3540. The incident follows the principal, and not the principal the incident.

SEC. 3541. An interpretation which gives effect is preferred to one which makes void.

SEC. 3542. Interpretation must be reasonable.

SEC. 3543. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

SUPPLEMENTAL REPORT

OF THE

Commissioners for the Revision and Reform of the Law,

BEING THAT PORTION OF THE

REVISED POLITICAL CODE

RELATING TO

MUNICIPAL CORPORATIONS.

TITLE III.

MUNICIPAL CORPORATIONS.

COMMISSIONERS' NOTE: The amendments suggested to this title are numerous and important. The subject of the title has been changed from "The Government of Cities," to "Municipal Corporations," and the latter phrase has been employed generally throughout the title, instead of the word "cities," "city and county," or "towns." There can be no confusion as between cities, and counties, from the use of this term, the supreme court having held that counties are not municipal corporations within the meaning of section 6, article XI, of the Constitution (*People* vs. *Sacramento*, 45 Cal. 692; *People* vs. *McFadden*, 81 Cal. 489), and that the city and county of San Francisco is a municipal corporation within the meaning of said section and article. (*Denman* vs. *Broderick*, 111 Cal. 96.)

The chapters of the title have also been rearranged and renumbered, which was rendered necessary by the incorporation of the general provisions of the act of March 13, 1883, "to provide for the organization, incorporation and government of municipal corporations" (Stats. 1883, 93), and of numerous other acts hereinafter referred to. That portion of the municipal corporations act providing forms of charters for the various classes of cities is of doubtful utility since the amendment of section 8, article XI, of the Constitution, allowing any city containing a population of more than thirty-five hundred inhabitants to frame a charter for its own government, and of section 6, article XI, providing that such charters, in so far as they relate to "municipal affairs," take precedence over general laws. It seems useless to cumber the code with matter so little likely to be of benefit, and the commissioners have therefore omitted those charters applicable to cities of the first, second, third and fourth classes (all such cities being included in the constitutional privilege of framing their own charters). The charters applicable to cities of the fifth and sixth classes have been retained, as many cities are now operating under those provisions.

No attempt has been made to codify the special legislation relating to the city and county of San Francisco (except so far as the same is made of general application), as it is assumed that the charter recently adopted by the people of that city will be ratified by the legislature, and thus supersede the present confused mass of legislation appertaining to said municipality.

CHAPTER I.

INCORPORATION, DISINCORPORATION, REORGANIZATION, CONSOLIDATION, AND CLASSIFICATION OF.

Section 4350. When may incorporate.
4351. How may incorporate.
4352. Election, how conducted.
4353. How may reincorporate.
4354. Effect of reorganization.
4355. Reorganization of city acting under charter.
4355*a*. City acting under charter may change fiscal year.

Section 4356. Validation of incorporation and acts of.
4357. Reorganization as city of a higher class.
4358. Disincorporation of.
4359. Classes of, defined.
4359*a*. Certificate of classification to be filed in office of secretary of state.

When may incorporate.

SEC. 4350. Any portion of a county containing not less than five hundred inhabitants, and not incorporated as a municipal corporation, may become incorporated under the provisions of this title, and when so incorporated shall have the powers conferred, or that may be hereafter conferred, by law, upon municipal corporations of the class to which the same may belong.

How may incorporate.

SEC. 4351. A petition shall first be presented to the board of supervisors of such county, signed by at least fifty of the qualified electors of the county, residents within the limits of such proposed corporation, and the affidavit of three qualified electors residing within the proposed limits, filed with the petition, shall be prima facie evidence of the requisite number of signers. The petition shall set forth and particularly describe the proposed boundaries of such corporation, and state the number of inhabitants therein, as nearly as may be, and shall pray that the same may be incorporated under the provisions of this title. Such petition shall be presented at a regular meeting of such board, and shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in such county, together with a notice stating the time of the meeting at which the same will be presented. When such petition is presented, the board of supervisors shall hear the same, and may adjourn such hearing from time to time, not exceeding two months in all, and on the final hearing shall make such changes in the proposed boundaries as they may find to be proper, and shall establish and define such boundaries, and shall ascertain and determine how many inhabitants reside within such boundaries; *provided*, that any changes made by said board of supervisors shall not include any territory outside of the boundaries described in such petition. The boundaries so established by the board of supervisors shall be the boundaries of such municipal corporation until by action, authorized by law for the annexation of additional territory to, or the taking of territory from, said municipal corporation, such boundaries shall be changed; *provided*, whenever it shall appear to the board of supervisors that the boundaries

of any municipal corporation have been incorrectly described, the board shall direct the county surveyor to ascertain and report a description of the boundaries. The board of supervisors shall, at their first regular meeting after the filing of the report of the county surveyor, cause notice to be published in some newspaper published in the county, that the report will be acted upon at the next regular meeting of the board, and at said meeting the board shall ratify the report of the county surveyor, with such modifications as they shall deem necessary, and the boundaries so established shall be the legal boundaries of said municipal corporation. They shall then give notice of an election to be held in such proposed corporation for the purpose of determining whether the same shall become incorporated. Such notice shall particularly describe the boundaries so established, and shall state the name of such proposed corporation, and the number of inhabitants so ascertained to reside therein, and the same shall be published for at least two weeks prior to such election, in a newspaper printed and published within such boundaries, or posted for the same period in at least four public places therein. Such notice shall require the voters to cast ballots, which shall contain the words "For incorporation," or "Against incorporation," or words equivalent thereto, and also the names of persons voted for to fill the various elective municipal offices prescribed by law for municipal corporations of the class to which such proposed corporation will belong.

Election, how conducted.

SEC. 4352. Such elections shall be conducted in accordance with the general election laws of the state, and no person shall be entitled to vote thereat unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided within the limits of such proposed corporation for at least sixty days next preceding such election. The board of supervisors shall meet on the Monday next succeeding such election, and proceed to canvass the votes cast thereat; and if, upon such canvass, it appears that the majority of votes cast are for the incorporation, the board shall, by an order entered upon their minutes, declare such territory duly incorporated as a municipal incorporation of the class to which the same shall belong, under the name and style of the city (or town, as the case may be) of ——— (naming it), and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. Said board shall cause a copy of such order, duly certified, to be filed in

the office of the secretary of state, and from and after the date of such filing, such incorporation shall be deemed complete, and such officers entitled to enter immediately upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively only until the next general municipal election to be held in such city or town, and until their successors are elected and qualified; and it shall not be necessary in any action, civil or criminal, to plead and prove the organization or existence of such corporation, and the courts shall take judicial cognizance thereof without proof.

How may reincorporate.

SEC. 4353. The council, or other legislative body, of any municipal corporation, organized or incorporated prior to the first day of January, eighteen hundred and eighty, at twelve o'clock meridian, shall, upon receiving a petition therefor, signed by not less than one fifth of the qualified electors of such municipal corporation, as shown by the vote cast at the last municipal election held therein, submit to the electors of such municipal corporation, at the next general election to be held therein, the question whether such municipal corporation shall become organized under the general laws of the state relating to municipal corporations of the class to which the same may belong. Notice that such question will be submitted shall be given by publication in a newspaper printed and published in such municipal corporation, or if there be no newspaper printed and published therein, by printing and posting the same in at least four public places therein, including the place or places where such election is to be held. Such notice shall be so published or posted for at least four weeks prior to such election, and shall also be made a part of the general election notice. Such notice shall distinctly state the proposition to be so submitted, and shall designate the class to which such corporation belongs, and shall invite the electors thereof to vote upon such proposition by placing upon their ballots the words "For reorganization," or "Against reorganization," or words equivalent thereto. The votes so cast shall be canvassed at the time and in the manner in which the other votes cast at such election are canvassed. If, upon such canvass, a majority of all the electors voting at such election shall be found to have voted for such reorganization, the said council, or other legislative body, shall, by an order entered upon their minutes, cause their clerk, or other officer performing the duties of clerk, to make

and transmit to the secretary of state a certified abstract of such vote; which abstract shall show the whole number of electors voting at such election, the number of votes cast for reorganization, and the number of votes against reorganization. Said council, or other legislative body, shall immediately thereafter call a special election for the election of the officers required by law to be elected in corporations of the class to which such municipal corporation shall belong, which election shall be held within six weeks thereafter. Such election shall be held in all respects in the manner prescribed, or that may hereafter be prescribed by law for municipal elections in corporations of such class, and shall be canvassed by the council, or other legislative body calling the same, who shall immediately declare the result thereof, and cause the same to be entered upon their journal. From and after the date of such entry such corporation shall be deemed to be organized under such general laws, under the name and style of the city and county (or city, or town, as the case be) of ——— (naming it), with the powers conferred, or that may hereafter be conferred, by law upon municipal corporations of the class to which the same may belong; and the officers elected at such election shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, only until the next general municipal election to be held in such municipal corporation, and until their successors are elected and qualified.

Effect of reorganization.

SEC. 4354. Any municipal corporation organized under the provisions of section 4353 shall, for all purposes, be deemed and taken to be in law the identical corporation theretofore incorporated and existing; and such reorganization shall in nowise affect or impair the title to any property owned or held by such corporation, or in trust therefor, or any debts, demands, liabilities, or obligations existing in favor of or against such corporation, or any proceeding then pending; nor shall the same operate to repeal or affect in any manner any ordinance theretofore passed or adopted and remaining unrepealed, or to discharge any person from any liability, civil or criminal, then existing, for any violation of any such ordinance; but such ordinances, so far as the same are not in conflict with such general laws, shall be and remain in force until repealed or amended by competent authority; *provided*, that proceedings theretofore

commenced shall, after such reorganization, be conducted in accordance with the provisions of such general laws.

COMMISSIONERS' NOTE: The preceding five sections were sections 1, 2, 3, 4 and 5 of the Municipal Corporations Act of March 13, 1883. (Stats. 1883, 93.)

Reorganization of city acting under charter.

SEC. 4355. The council, or other legislative body of any municipal corporation, in this state, operating under a charter framed under section 8, article XI, of the Constitution, shall have power, and it shall be their duty, whenever a petition is presented to them, signed by one half of the qualified electors of such municipal corporation, by ordinance, to submit to the qualified electors thereof at any general election the question whether such municipality shall abandon such charter and reorganize under the general laws of the state providing for the organization, incorporation, and government of municipal corporations. Such election shall be called and held in accordance with the provisions of such charter for calling and holding elections, and if two thirds of such qualified electors voting at such election shall vote to abandon such charter and reorganize under the general laws of the state providing for the organization, incorporation, and government of municipal corporations, such municipality shall, from and after the thirtieth day after such election, cease to be organized under such charter, and such charter shall be superseded by said general laws, and organized thereunder. In case such proposition shall fail to receive the vote of two thirds of such electors, then the proposition for the abandonment of such charter and reorganization under the general laws shall not be again submitted for two years.

COMMISSIONERS' NOTE: The preceding section was Section 1, of the act of March 27, 1897 (Stats. 1897, 200). While it is deemed of doubtful utility, it is inserted for the consideration of the legislature.

City acting under charter may change fiscal year.

SEC. 4355*a*. Any municipal corporation, operating under a charter framed under the provisions of section 8, Article XI, of the Constitution, may, by ordinance, adopted by a majority of all the members of the council, or other legislative body, of such municipal corporation, change the fiscal year of such municipality, so as to begin at any other time than that fixed by such charter; and may provide sufficient revenue to carry on the business of such municipal corporation from the end of the previous fiscal year to the commencement of the fiscal year thus fixed, by adding to the first tax levy, made for the new fiscal year, an amount, in addition to the limit in such charter

provided, that will raise enough money to pay claims contracted between the ending of the previous fiscal year and the commencement of the new fiscal year. And may also provide, by ordinance, passed in the same manner, the time for making the annual tax levy, and the time for which the lien thereof will attach; and may change the time or times designated in such charter, for making the assessment, demanding statements of property, preparing the assessment roll, equalizing the assessment, and all other matters relating to the assessment and collection of municipal taxes.

COMMISSIONERS' NOTE: The above section was the act of March 26, 1895 (Stats. 1895, 128).

Validation of incorporation, and acts of.

SEC. 4356. All municipal corporations, the organization and incorporation of which have been authenticated by an order of a board of supervisors in this state, declaring the same incorporated as municipal corporations of the classes to which such corporations may respectively belong, and a certified copy of which order has been filed by such board of supervisors in the office of the secretary of state, showing such copy of said order to have been filed in said office, and which corporations thereafter have acted in the form and manner of municipal corporations under the provisions of "An act to provide for the organization, incorporation, and government of municipal corporations," approved March thirteenth, eighteen hundred and eighty-three, and the amendments thereto, are hereby declared to be and to have been municipal corporations from the date of filing the certified copy of said order of the board of supervisors with the secretary of state; and all the acts of the said municipal corporations heretofore exercised according to the act aforesaid are hereby validated and declared as legal.

COMMISSIONERS' NOTE: This section was section 1 of the act of March 17, 1897 (Stats. 1897, 168). Similar acts were passed March 11, 1891 (Stats. 1891, 92), March 16, 1889 (Stats. 1889, 203), March 15, 1887 (Stats. 1887, 150), and March 9, 1885 (Stats. 1885, 31). The repeal of all of said statutes is recommended, as their provisions are substantially the same as those of the more recent enactment, here inserted.

Reorganization as city of a higher class.

SEC. 4357. The council, or other legislative body of any municipal corporation, may at any time cause an enumeration of the inhabitants to be made, and in such manner and under such regulations as such body may, by ordinance, direct. If upon such enumeration it shall appear that such municipal

corporation contains a sufficient number of inhabitants to entitle it to reorganize under a higher or lower class, the council, or other legislative body, shall, upon receiving a petition therefor, signed by not less than one fifth of the qualified electors thereof, submit to the electors of such municipality, at the next general election to be held therein, or at a special election, which the legislative body of such municipal corporation may by ordinance call for that purpose, the question whether such municipality shall reorganize under the laws relating to municipal corporations of the class to which such municipality may belong. And thereupon such proceedings shall be had, and election held, as provided in the general law for the organization, incorporation, and government of municipal corporations and not inconsistent with the provisions of this title. If a majority of the votes cast at such election shall be in favor of such reorganization, thereafter such officers shall be elected as are, or may be, at the time prescribed by law for municipal corporations of the class having the population under which such reorganization is held; and from and after the qualification of such officers, such corporation shall belong to such class.

COMMISSIONERS' NOTE: This section was section 3 of the act of March 2, 1883 (Stats. of 1883, 24), as amended March 27, 1897 (Stats. 1897, 218).

Disincorporation of.

SEC. 4358. A municipal corporation may disincorporate after proceedings had as required in this section. The council, or other legislative body of such corporation shall, upon receiving a petition therefor, signed by not less than one half of the qualified electors thereof, as shown by the vote cast at the last municipal election held therein, submit to the electors of such corporation the question whether such municipal corporation shall disincorporate. Such question shall be submitted at a special election to be held for that purpose, and such legislative body shall give notice thereof by publication in a newspaper printed or published in such corporation, or if there is no newspaper published in said corporation, then in some newspaper published in the county in which said corporation is situated, for a period of thirty days prior to such election. Said notice shall state that the question of disincorporating said corporation will be submitted to the legal voters of the same at the time appointed for such election, and the electors shall be invited thereby to vote upon such proposition by placing upon their ballots the cross, as provided by law, after the words "For disincorporation," or "Against disincor-

poration." Such legislative body shall also designate in said notice the place or places at which the polls will be open in said municipal corporation; and shall also appoint and designate in such notice the names of the officers of election. The vote at said election shall be taken, canvassed, and returned in the same manner as in other municipal elections. Such legislative body shall meet on the Monday next succeeding the day of such election and proceed to canvass the votes cast thereat. If it be found by the canvass of said votes that less than two thirds of the votes cast were in favor of disincorporation, such legislative body shall declare the petition for disincorporation denied; in which case no new election shall be held on the question of disincorporating the corporation involved in said petition and vote until after the expiration of two years from date of the election so held. In case it shall appear from said canvass that two thirds of all the votes cast were in favor of disincorporation, said legislative body shall, under their hands, make and file in their office, and cause to be entered upon their record of proceedings, an order that the petition for such disincorporation be granted, and declaring that such corporation be disincorporated; said order to take effect at the time hereinafter provided.

Said legislative body shall, in case said corporation is so disincorporated, forthwith cause their clerk, or other officer performing the duties of clerk, by an order entered in their minutes, to make and transmit to the secretary of state and board of supervisors of the county in which said corporation is situated, a certified copy and abstract of the notice of election hereinbefore provided for, the whole number of electors voting for said disincorporation, and the number of electors voting against said disincorporation. Thirty days from and after the holding of the election, in case two thirds of the said votes were cast in favor of said disincorporation, said municipal corporation shall be disincorporated. Said legislative body shall forthwith, after ascertaining by said canvass that said disincorporation has been carried, determine the amount of the indebtedness of said municipal corporation, the amount of money in the treasury thereof, and the amount of any tax levy made by said corporation unpaid or not due, and all other indebtedness due or coming due to said corporation, and within thirty days from the date of said election shall transmit a certified statement of said amount to the board of supervisors of the county in which said municipal corporation is situated; and the treasurer of said corporation shall before the expiration of the said thirty

days turn over to the treasurer of said county all moneys of said municipal corporation in his possession, and said county treasurer shall place said moneys in a special fund, to be drawn upon as hereinafter provided for. Upon the disincorporation of said municipal corporation, every public officer of said corporation shall immediately turn over to the board of supervisors of the county in which said corporation is situated, all public property of every nature and description in their possession; *provided, however*, that all court records of the recorder's court of the said municipal corporation shall be retained by said recorder as justice of the peace of the township, and, as such justice of the peace, he shall have authority to execute and complete all unfinished business standing on the same. Nothing contained in this section shall be held to relieve said municipal corporation, or the territory included within it, from any liability for any debt contracted by such municipal corporation prior to its disincorporation. All warrants for said indebtedness shall be drawn by the board of supervisors of the county in which said municipal corporation is situated on the fund hereinabove provided for in the county treasury. If, at the time of said disincorporation, a tax shall have been levied by said municipal corporation, and remains uncollected, it shall be the duty of the tax collector of the county in which said municipal corporation was situated to collect said tax when due, and pay the same into the county treasury to the credit of the fund hereinabove provided for. If, at any time after the disincorporation of any municipal corporation, it shall be found that there is not sufficient money in the treasury to the credit of the fund hereinabove provided for, with which to pay any indebtedness of said municipal corporation, the board of supervisors of said county shall have the power, and it shall be their duty, to levy, and there shall be collected from the territory formerly included within said municipal corporation, a tax or taxes sufficient in amount to pay the said indebtedness, or indebtedness of said municipal incorporation; such tax or taxes, assessment, and collection shall be made in the same manner, and at the same time that other taxes of said county are levied and collected, and shall be an additional tax upon the property included within said territory for the payment of said debts. If, after payment of the debts of said municipal corporation, there shall remain any surplus in the hands of said county treasurer to the credit of the fund hereinbefore mentioned, the money so remaining shall be transferred to the school fund of the districts, or district, covered by said muni-

cipal corporation. The board of supervisors of the county in which any such municipal corporation has been disincorporated, shall have the power, and it shall be their duty to ascertain the indebtedness of said municipal corporation at the time of its disincorporation, and the amount of money in its treasury and the amount due to it at the said time, if the board of trustees, or other legislative body of such corporation shall fail or refuse to return to said board of supervisors the statement of said amounts as hereinbefore in this section provided. Said board of supervisors shall make provision for the collection of the amounts due to said municipal corporation, and said county shall succeed to and possess all the rights of said municipal corporation in and to said indebtedness, and shall have power to sue for or otherwise collect any such debts, in the name of the county. All costs and expense of ascertaining the facts hereinbefore mentioned, and all other costs and expense incurred by the board of supervisors in the execution of the powers and duties of said board of supervisors, provided for in this section, shall be paid out of the special fund in said county treasury hereinbefore in this section provided for.

COMMISSIONERS' NOTE: The above section was the act of March 26, 1895 (Stats. 1895, 115), as amended February 23, 1897 (Stats. 1897, 17). Said act applied only to cities of sixth class, but is here made general.

Classes of, defined.

SEC. 4359. All municipal corporations within the state are hereby classified as follows: Those having a population of more than two hundred thousand shall constitute the first class; those having a population of more than thirty thousand, and not exceeding two hundred thousand, shall constitute the second class; those having a population of more than fifteen thousand, and not exceeding thirty thousand, shall constitute the third class; those having a population of more than ten thousand, and not exceeding fifteen thousand, shall constitute the fourth class; those having a population of more than three thousand, and not exceeding ten thousand, shall constitute the fifth class; those having a population of not exceeding three thousand shall constitute the sixth class.

COMMISSIONERS' NOTE: This section was section 1 of the act of March 2, 1883 (Stats. 1883, 24), as amended April 1, 1897 (Stats. 1897, 421).

Certificate of classification to be filed in office of secretary of state.

SEC. 4359*a*. Every municipal corporation in this state must cause to be filed in the office of the secretary of state, the certificate of its clerk, showing the class to which such municipality belongs. If the class be changed as provided by law, the clerk

of such municipality must immediately so certify to the secretary of state, as in the case of an original certificate of classification. The secretary of state shall file said certificate and record the same in a book kept for that purpose. He shall charge and collect one dollar for filing and recording each of said certificates.

COMMISSIONERS' NOTE: The above section is new and is deemed desirable in order to provide an official record of the classification of municipal corporations within the state.

CHAPTER II.

OFFICERS OF.

COMMISSIONERS' NOTE: This chapter includes such portions of Chapters II, III and IV of the original code as were necessary to be incorporated. Since the adoption of the Municipal Corporations Act, and of the several amendments to the Constitution hereinbefore referred to, it is not necessary to retain many of the provisions of said chapters, for the reason that they are contained in the charters, general or special, under which municipal corporations exist. The case of *Buck* vs. *City of Eureka*, 109 Cal. 504, in which it was held that certain provisions of said chapters were a part of the charter of said city, while not decided until after, was commenced prior to the adoption of the present charter of said city, and of the amendment to section 6, Article XI, of the Constitution, which gave city charters precedence over general laws in municipal affairs. The case of the *City of Los Angeles* vs. *Teed*, 112 Cal. 319, where it was held that certain sections of the chapters referred to applied to all cities, was also decided before the amendment above referred to had been carried at the election of 1896. It is not deemed necessary to retain any of the provisions of sections 4385 to 4392, inclusive, as they are all fully covered by the charters or special laws governing the cities to which they would apply.

Section 4361. Municipal corporation body politic and corporate.
4362. Officers, and selection of.
4363. Official oath and bond.
4364. Election of officers upon failure to elect under charter.
4365. Appointment of commissioners.
4366. Powers of commissioners.
4367. Election returns.
4368. Canvassing returns.
4369. Officers qualifying.
4370. Effect of elections.
4371. Resolution as to organization.
4371*a*. Duty of outgoing officers.

Municipal corporation body politic and corporate.

SEC. 4361. A municipal corporation is a body politic and corporate with the general powers of a corporation, and the officers and powers specified or necessarily implied in this title or in the laws or charters, general or special, under which it exists. The words "municipal corporation" and "municipality" as used in this title shall be understood and construed

to include all corporations heretofore organized and now existing and those hereafter organized for municipal purposes.

COMMISSIONERS' NOTE: The amendment to the above section consists principally in referring to city charters instead of "special laws" for the specific powers of municipal corporations. The number of the section has also been changed, as have most of those found in the original chapters, and incorporated herein. The definitions are new.

Officers, and selection of.

SEC. 4362. The officers of a municipal corporation are such as may be designated and provided for by law and in the charter, general or special, under which it exists. They are elective or appointive, and their terms of office, time of election, manner of appointment, powers, duties, compensation, and all other matters connected therewith, are governed by law and the provisions of such charter; *provided*, that all officers of a municipal corporation shall continue in office, and their powers shall not cease until their successors shall have been chosen, and qualified as required by law.

COMMISSIONERS' NOTE: This section is new, and is inserted in harmony with the constitutional provisions that municipal affairs shall be governed by charter and not by general laws.

Official oath and bond.

SEC. 4363. All municipal officers before entering upon their duties must take the oath of office. They must give bond, in the manner and amount required by law and the provisions of the charter of their respective cities. The council, or other legislative body, may at any time require any officer to give additional bond, and, upon his failure so to do, his office must be deemed vacant. If any person elected to a city office removes from the city, absents himself for more than thirty days without leave from the council, or other legislative body, or fails to qualify within ten days after election, his office is vacant.

COMMISSIONERS' NOTE: The above section is drawn from the original sections 4373 and 4374. It may not be necessary, but is inserted because of the importance of its provisions, and because it is not possible for the Commissioners to know whether it is covered by all the city charters in existence.

Election of officers upon failure to elect under charter.

SEC. 4364. Whenever a municipal corporation shall have failed, from any cause, to elect officers in accordance with its charter, and there are no officers to carry on the city government, or call an election for officers, in such case citizens of such corporation may present a petition to the governor for the appointment of three commissioners of election. Such petition

shall set forth: 1. The name of the corporation, and when and how organized; 2. When the last election for officers took place, and whether any of such officers are performing their duties, and if not, how long since they ceased to perform their duties; 3. The provision of the charter as to the qualifications of voters; 4. That the persons signing the petition possess the qualifications provided by the charter for voters, and that each of said signers is a householder and freeholder in said corporation. The petition shall be signed by not less than seventy-five persons possessing all the qualifications mentioned in the body thereof, and shall be verified by at least two of the signers, that, of their own knowledge, the petition is true, and that all the signers possess all the qualifications set forth in the petition. Upon the presentation of the petition to the governor, he may either act upon the same or require additional evidence of the matters set forth therein. Upon being satisfied of the truth of the matters set forth in the petition, the governor is authorized and empowered to appoint three persons as commissioners of election for such corporation. Such commission shall be known and styled "board of election commissioners for" (here give name of corporation).

Appointment of commissioners.

SEC. 4365. The governor shall cause a commission to be issued to the commissioners, and the issuance of such commission shall be conclusive evidence of the regularity of all the proceedings to and including the appointment of such commissioners. Within ten days after their appointment, the commissioners shall take the oath of office before some judge or clerk, which oath shall be indorsed upon the commission and a copy filed in the office of the secretary of state, and shall organize by the election of a president and secretary from their own members. The board shall cause to be kept minutes of all their proceedings, which minutes shall be signed at the close of each meeting by the president and secretary.

Powers of commissioners.

SEC. 4366. The board of election commissioners shall have power:

1. By an order entered in their minutes, to call an election for such officers as are declared in the charter of such corporation to be elected only by the voters in said corporation. Such orders shall specify the names of the offices to be filled, and, when any office is to be filled by an election in any ward or subdivision of said corporation, the order shall so state, and

the date fixed for the election. Previous to the election, the board shall appoint officers of election, and fix the places of holding the election, as required in the charter of such corporation. The board shall cause notice of such election to be published in one or more newspapers published in said corporation; or if none be published therein, then by posting notices, for at least twenty days before such election. Such election shall be conducted as required by the charter of said corporation for the election of officers, except that it shall not be necessary to use printed registers, but should any voter be challenged on the ground that his name does not appear on the great register of the county, it shall be sufficient for him to state, under oath, that he believes his name is on the great register, and if no other evidence is offered, the board of election shall accept his statement as true.

Election returns.

SEC. 4367. The boards of election shall make return of the election as required in the charter, except that the returns shall be returned and delivered to the board of election commissioners, of all officers voted for at such election, without reference to whether any of such officers were voted for in the whole, or only a ward or subdivision of the corporation, and no officer of election shall issue a certificate of election.

Canvassing returns.

SEC. 4368. Within five days after the election the board of election commissioners shall proceed to canvass said returns and declare what persons were elected. Said board shall thereupon issue certificates of election to the persons so declared to be elected; such certificate shall be signed by all the commissioners, and shall be conclusive evidence of the regularity of all the proceedings taken in said election and by said board, except as against any suit or proceeding that may be commenced to oust from office any of said persons holding a certificate.

Officer qualifying.

SEC. 4369. Within ten days after issuance of the certificates, the officers shall qualify and enter upon the discharge of their duties, in accordance with the charter. If any person chosen at said election shall fail to take the oath of office and enter upon the discharge of the duties thereof within the time above specified, then the office to which he shall have been elected shall be deemed and held to be vacant, the same as if he had never been elected. At the first meeting of the legislative body

of the municipality after the election, the board of election commissioners shall deliver to said legislative body all books and papers in their possession, relating to their office of election commissioners, and said legislative body shall cause the same to be filed by their clerk, and shall cause the commission issued by the governor to said commissioners, and the minutes of said commissioners, and notice of the election, to be entered in the book of minutes of said legislative body, and such entries, when so made, shall be evidence of all the matters therein stated, and as conclusive evidence as the original.

Effect of elections.

SEC. 4370. Whenever the officers elected at such election, and the officers authorized by the charter to be elected or appointed by the legislative body or executive department of said corporation, shall have qualified and entered upon the discharge of their duties, then said corporation shall be deemed and held to be fully organized and in operation, as if said election had been held at the time and in all respects in the manner required by the charter.

Resolution as to organization.

SEC. 4371. Whenever the government of the municipal corporation is in full operation, as set forth in section 4370, the legislative body shall cause a resolution to be entered in their minutes declaring the same, and such resolution shall be conclusive evidence of the same, except as against a direct action or proceeding to set aside or annul said government.

COMMISSIONERS' NOTE: The preceding eight sections constituted the act of March 14, 1885 (Stats. 1885, 136). The act was originally limited to cities of the sixth class, but if there be any necessity for its retention, it should apply to other classes as well, and is therefore made general.

Duty of outgoing officers.

SEC. 4371*a*. As soon as the officers elected under any of the provisions of this title shall have qualified in accordance with law, all persons, if any, then in possession of the offices of such corporation, shall immediately quit and surrender up the possession of such offices, and shall deliver to the officers so elected all moneys, books, papers, or other things in their official custody, and all property of such corporation in their hands, notwithstanding that the terms of office for which they were respectively elected or appointed may not then have expired; and all officers, boards, and persons holding any property in trust for any public use, the administration of which use is vested by such general laws in such corporation, or in any of

its officers, shall, upon demand from such corporation or such officers, convey such property to such corporation or such officers, by good and sufficient deeds of conveyance, in trust for such public use.

COMMISSIONERS' NOTE: This section was section 6 of the Municipal Corporations Act of March 13, 1883 (Stats. 1883, 93).

CHAPTER III.

POWERS OF.

ARTICLE I.

DIVISION OF POWERS.

Division of powers.

SEC. 4372. Every municipal corporation has legislative, executive, judicial, and general powers, which are vested in the respective officers or bodies, designated in the laws and charters governing such municipal corporations.

COMMISSIONERS' NOTE: This section is practically new, although a small portion thereof is taken from old section 4355.

ARTICLE II.

LEGISLATIVE POWERS.

Section 4373. What, and how exercised.
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What and how exercised.

SEC. 4373. Unless otherwise provided by the charter, general or special, under which it exists, a municipal corporation shall possess the powers in this article set forth, which powers shall be exercised in the manner herein provided.

COMMISSIONERS' NOTE: This section is new, and is intended to introduce the following sections: 4374, et seq., which authorize the performance of specific acts, and provide the manner of such performance.

May take its census.

SEC. 4374. The council, or other legislative body of any municipal corporation of this state, is hereby authorized, whenever such legislative body shall deem it necessary, between the years of taking the federal census, to take the census of such municipality, in the manner prescribed by section 4375.

How census taken.

SEC. 4375. Said council, or other legislative body of any municipal corporation, electing to take such census, shall pass a resolution of intention, declaring its intention to cause such census to be taken by one or more suitable persons appointed

therefor by such council, or other legislative body, at the expense of said municipality desiring such census taken, and such census shall, by such persons so appointed, be taken of all the inhabitants of such municipal corporation, and in such census the full name of each person shall be plainly written, and the names alphabetically arranged and regularly numbered in one complete series, and when completed shall be verified before any officer authorized to administer oaths, and be filed with the clerk of such municipality. A certified copy of such census shall be prepared by said clerk, after being so filed, and shall be filed by him with the secretary of state for this state, and thereupon the same shall be known and be the official state census of said municipality.

COMMISSIONERS' NOTE: The two preceding sections were sections 1 and 2 of the act of February 25, 1897 (Stats. 1897, 28), with slight modifications.

Effect of taking census.

SEC. 4376. The taking and certifying of such census shall not affect the classification or government of such municipal corporation. The decennial census, taken under the direction of the congress of the United States, shall be the basis upon which the respective populations of municipal corporations of this state shall be determined for purposes of classification thereof, and all matters connected with or depending upon the class of such municipal corporations.

COMMISSIONERS' NOTE: The preceding section is partly new and partly drawn from section 2 of the act of March 2, 1883 (Stats. 1883, 24).

May change boundaries by annexing or excluding territory.

SEC. 4377. The boundaries of any municipal corporation, whether heretofore or hereafter formed, incorporated, reincorporated, organized, or reorganized, may be altered, and new territory annexed thereto, or territory excluded therefrom, upon proceedings being had and taken as in this section provided. The council, or other legislative body of such municipal corporation, upon receiving a written petition therefor containing a description of the territory asked to be annexed to such corporation, or excluded therefrom, and signed by not less than one fifth in number of the qualified electors of such municipal corporation, computed upon the number of votes cast at the last general municipal election held therein, must, without delay, submit to the electors of such municipal corporation, and to the electors residing in the territory proposed by such petition to be annexed to such corporation, if the proceedings be for the annexation of territory, the question whether

such territory shall be annexed to, or excluded from, such municipal corporation. Such question shall be submitted at a special election to be held for that purpose, and no other; and such legislative body shall cause notice to be given of such election by the publication of a notice thereof in a newspaper printed and published in such municipal corporation, and also in a newspaper, if any such there be, printed and published outside of such corporation, but in the county in which the territory so proposed to be annexed is situated, in each case at least once a week for a period of four successive weeks next preceeding the date of such election. Such notice shall distinctly state the proposition to be submitted, *i. e.*, that it is proposed to annex to, or exclude from such municipal corporation the territory sought to be annexed or excluded, specifically describing the boundaries thereof; and in said notice the qualified electors of said municipal corporation, and the qualified electors residing in said territory so proposed to be annexed, if the proceeding be for annexation, shall be invited to vote upon such proposition by placing upon their ballots the words "For annexation," or "Against annexation," or words equivalent thereto, or "For exclusion," or "Against exclusion," or words equivalent thereto, as the case may be. Such legislative body shall establish, and in such notice of election designate the voting precinct or precincts, and the place or places at which the polls will be opened in such territory so proposed to be annexed, and also in such municipal corporation. And such place or places shall be that or those commonly used as voting places within such municipal corporation, and also that or those commonly used within such new territory, if any such there be. Such legislative body shall also appoint and designate in said election notice the officers of such election, who shall be for each voting place in such municipal corporation, and for each voting place in said new territory, two judges and one inspector, each of whom shall be a qualified elector of the voting precinct in which he is appointed to act as an officer of such election. The ballots used at such election, the opening and closing of the polls, and the holding and conducting of such election, shall be in conformity, as far as may be, with the general laws of this state concerning elections; and the judges and inspectors of such election shall immediately on the closing of the polls, count the ballots, make up and certify the tally-sheets of the ballots cast at their respective polling places, seal, and then immediately return the same as herein provided, doing so, as nearly as practicable, in

the manner provided in the election laws of this state; but the ballots, tally-sheets, and returns shall be so returned to and deposited with the clerk of such legislative body. Such legislative body shall, at the time provided for its regular meeting next after the expiration of three days from and after the date of said election, meet and proceed to open and canvass said ballots, tally-sheets, and returns; and such canvass shall be completed at such meeting, if practicable, and in any event as soon as practicable, avoiding adjournment, if possible, until said canvass is completed. Such canvass by such legislative body shall be conducted and completed as follows: The ballots cast in such territory so proposed to be annexed or excluded, together with the tally-sheets and returns belonging therewith, shall be canvassed separately; and the ballots cast inside of said municipal corporation, or in the remainder thereof, if the proceeding be for the exclusion of territory, together with their tally-sheets and returns, shall be canvassed separately. Immediately upon the completion of such canvass said legislative body shall cause a record thereof to be made and entered upon its minutes, showing the whole number of ballots cast in such territory, proposed to be annexed or excluded, the whole number of ballots cast in such municipal corporation, the number thereof cast in each in favor of annexation or exclusion, and the number thereof cast in each against annexation or exclusion; and if it shall appear from such canvass that a majority of all the ballots cast in such territory proposed to be annexed or excluded, and a majority of all the ballots cast inside of said municipal corporation, are in favor of annexation, or exclusion, as the case may be, the clerk, or other officer performing the duties of clerk shall immediately record the same upon the minutes of such legislative body, and shall promptly make and certify, under the seal of said municipal corporation, and transmit to the secretary of state, a copy of said record so entered upon said minutes, together with a statement showing the date of said election and the time and result of said canvass, which document shall be filed by the secretary of state immediately upon the receipt thereof. From and after the date of the filing of said document in the office of the secretary of state, the annexation or exclusion of such territory so proposed to be annexed or excluded, shall be deemed to, and shall be complete, and thenceforth such annexed or excluded territory shall be or cease to be, to all intents and purposes, a part of said municipal corporation, as the case may be, except only that no property within such

annexed territory shall ever be taxed to pay any portion of any indebtedness or liability of such municipal corporation contracted prior to or existing at the time of such annexation, nor shall any part of such excluded territory be relieved in any manner whatsoever from any liability for any debt contracted by such municipal corporation prior to such exclusion; *and provided further*, that such municipal corporation is hereby authorized to levy and collect from any territory so excluded, from time to time, such sums of money as shall be found due from it on account of its proportion of liability for any payment on the principal or interest of such debts; such assessment and collection shall be made in the same manner and at the same time that such assessment and collection is levied and made upon property of such municipal corporation for any payment on account of such debts; *and provided further*, that any such territory so excluded from any municipal corporation may at any time tender to the legislative body of such municipal corporation the amount for which such territory is liable on account of such debts, and, after such tender is made, such authority as is herein given municipal corporations to levy and assess taxes on such excluded territory shall cease. No territory which, at the time such petition for such proposed annexation is presented to such legislative body, forms any part of any incorporated town or city, shall be annexed under the provisions of this section.

COMMISSIONERS' NOTE: The preceding section is a combination of the first section of two acts, both passed March 19, 1889, that for the annexation of territory (Stats. 1889, 358), and that for the exclusion of territory (Stats. 1889, 356). It also covers the provisions of the act of March 20, 1889 (Stats. 1889, 433), which was a duplicate of section 1 of the act of March 19, 1889, for excluding territory. The method of determining the amount of indebtedness due from excluded territory to the municipality from which it was excluded, is provided in the Code of Civil Procedure, Title XIV, section 1822*a*, *et seq.*

Section 2 of the act for the exclusion of territory (Stats. 1889, 356) is omitted, as it is not only vague and uncertain in its meaning, but, if capable of being carried into effect, might result in great hardship to the municipality.

Altering boundaries of wards.

SEC. 4378. The council or other legislative body of any municipal corporation, which is or shall be divided into wards, and to or from which territory has been heretofore, or shall be hereafter annexed or excluded, must by ordinance either so alter the boundaries of the wards of such municipal corporation as to exclude such separated territory or to include such annexed territory in one or more wards adjoining such annexed territory, or make of such annexed territory one or more additional wards; *provided*, that the number of wards

shall not be so increased as to exceed the number which such municipal corporation may according to law have. In altering the boundaries of wards, or creating new wards, regard must be had to the number of inhabitants, so that each ward shall contain, as near as may be, an equal number of inhabitants, exclusive of persons incapable of citizenship in this state. Nothing in this section shall alter or affect the boundaries of any senatorial or assembly district.

COMMISSIONERS' NOTE: The above is sections 2 and 3 of the act for the annexation of territory, amended so as to apply also in the case of excluded territory. (Stats. 1889, 358.)

Expenses, how paid.

SEC. 4379. All proper expenses of proceedings for annexation or exclusion of territory, whether such annexation or exclusion shall be made and completed or not, shall be paid by the municipal corporation so annexing or excluding, or attempting to annex or exclude, such territory. The method of determining the amount of indebtedness due from any such excluded territory to the municipal corporation from which the same has been excluded, is provided in the Code of Civil Procedure, Title XIV, section 1822*a*, et seq.

COMMISSIONERS' NOTE: This was section 4 of the act last above referred to. There has been added a reference to the statute providing a method of determining indebtedness of the excluded territory, which act has been carried into the Code of Civil Procedure.

Consolidation of municipal corporations.

SEC. 4380*a*. Two or more contiguous municipal corporations may become consolidated into one corporation after proceedings had as required in this section. The council, or other legislative body of either such corporations shall, upon receiving a petition therefor, signed by not less than one fifth of the qualified electors of each of such corporations, as shown by the votes cast at the last municipal election held in each of such corporations, submit to the electors of each of such corporations the question whether such corporations shall become consolidated into one corporation. Such legislative body shall designate a day upon which a special election shall be held in each of such corporations to determine whether such consolidation shall be effected, and shall give written notice thereof to the council, or other legislative body of each of such corporations, which notice shall designate the name of the proposed new corporation. It shall thereupon be the duty of such legislative body of each of the corporations so proposed to be consolidated to give notice of such election, by publication in

a newspaper printed and published in such corporation, for a period of four weeks prior to such election. Such notice shall distinctly state the proposition to be so submitted, the name of the corporations so proposed to be consolidated, the name of the proposed new corporation, and the class to which such proposed new corporation will belong; and shall invite the electors to vote upon such proposition by placing upon their ballots the words "For consolidation," or "Against consolidation," or words equivalent thereto. The legislative bodies of each of such corporations shall meet in joint convention at the usual place of meeting of the legislative body of that one of such corporations having the greatest population, as shown by the last federal census, on the Monday next succeeding the day of election, and proceed to canvass the votes cast thereat. The votes cast in each of such corporations shall be canvassed separately; and if it shall appear upon such canvass that a majority of the votes cast in each of such corporations shall be for consolidation, such joint convention, by an order entered upon their minutes, shall cause the clerk, or other officer performing the duties of clerk, of the legislative body at whose place of meeting such joint convention is held, to make a certified abstract of such vote; which abstract shall show the whole number of electors voting at such election in each of such corporations, the number of votes cast in each for consolidation, and the number of votes cast in each against consolidation. Such abstract shall be recorded upon the minutes of the legislative body of each of such corporations; and immediately upon the record thereof, it shall be the duty of the clerk or other officer performing the duties of clerk, of each of such legislative bodies, to transmit to the secretary of state a certified copy of such abstract. Immediately after such filing, the legislative body of that one of such corporations having the greatest population, as shown by the last federal census, shall call a special election, to be held in such new corporation, for the election of the officers required by law to be elected in corporations of the class to which such new corporation shall belong, which election shall be held within six months thereafter. Such election shall be called and conducted in all respects in the manner prescribed, or that may hereafter be prescribed, by law for municipal elections in corporations of such class, and shall be canvassed by the legislative body so calling the same, who shall immediately declare the result thereof, and cause the same to be entered upon their journal. From and after the date of such entry such corporations shall

be deemed to be consolidated into one corporation, under the name and style of the city and county (or city or town, as the case may be) of ——— (naming it), with the powers conferred, or that may hereafter be conferred, by law upon municipal corporations of the class to which the same shall so belong; and the officers elected at such election shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, only until the next general municipal election to be held in such consolidated corporation, and until their successors are elected and qualified. All the provisions of this title applicable thereto shall apply to such corporation and to the officers thereof; *provided*, that no property within either of the former corporations so consolidated shall ever be taxed to pay any portion of any indebtedness of either of the other of such former corporations contracted prior to or existing at the date of such consolidation.

COMMISSIONERS' NOTE: The above was section 8 of the act of March 13, 1883 (Stats. 1883, 93).

May acquire private property for municipal uses, or for parks or boulevards.

SEC. 4381. Any municipal corporation may acquire and hold land for municipal uses and purposes, or for parks, or boulevards, and may also acquire and hold water, water rights, reservoir sites, sewer farms, rights of way for pipes, acqueducts, flumes, or other conduits, and all other property and appliances suitable and proper for supplying such corporation and its inhabitants with water, either by purchase, gift, or by condemnation, under the provisions of Title VII, Part III, of the Code of Civil Procedure.

COMMISSIONERS' NOTE: The above section is substantially the same as was provided by old section 4372 and by section 1 of the act of March 19, 1889 (Stats. 1889, 361), and the act of March 14, 1891 (Stats. 1891, 102).

Where such land may be. Jurisdiction over.

SEC. 4382. Such land may be within the corporate limitations of such municipal corporation, or adjacent thereto, and such municipal corporation so acquiring such land shall have the same power, authority and jurisdiction over such land, and over streets, roads, and avenues leading thereto, and over persons and property therein, as they now, or hereafter may have over any other portion of such municipality, and over persons and property therein; and the local courts of such municipal corporations shall have the same jurisdiction, both civil and

criminal, over such lands so acquired as they may have over persons and property within such municipality.

COMMISSIONERS' NOTE: The above section is drawn from section 2 of the act of March 19, 1889 (Stats. 1889, 361), and from the act of March 1, 1897 (Stats. 1897, 47), which became a law on that date without the governor's approval. The remainder of the act of March 19, 1889, above referred to, is covered by the provisions of the act of March 19, 1889 (Stats. 1889, 399), and the repeal of the same is therefore recommended.

May construct roads and grant franchises outside city limits.

SEC. 4383. Any municipal corporation owning any public park situated wholly or partly outside its corporate limits, may lay out, open, construct, or cause to be constructed, maintain, and control all roads, streets, avenues, and boulevards, which may be necessary or proper for the purpose of connecting such municipal corporation with such park; and may grant franchises for the construction and operation of street or other railroads along, over, and upon such roads, streets, avenues, and boulevards, and in or through such parks in the same manner, and to the same extent, and under the same conditions as it now has, or may hereafter have power to grant franchises for like purposes within the limits of such municipal corporation; *provided*, that in addition to all other conditions, the fare for a passenger on such street, or other railroads, shall never exceed five cents for a single trip from or to any point within said corporation to or from any point within such parks.

COMMISSIONERS' NOTE: The preceding section is drawn from the statutes of March 1, 1897 (Stats. 1897, 45 and 46).

May accept or reject gifts, bequests, etc.

SEC. 4384. The council, or other legislative body of any municipal corporation, is authorized and empowered to accept or reject, as they may deem best, any gift, bequest, or devise heretofore or hereafter made to or in favor of such municipality, or of any of the officers or boards of officers thereof, in their official capacity, or to or in their favor in trust for any lawful public purpose; and to hold and dispose of the same, and the income and increase thereof; and in case no provision is made by the donor, prescribing or limiting the uses or purposes to which such gift, bequest, or devise, or the income or increase thereof shall be put, such uses and purposes may be prescribed and regulated by the council, or other legislative body of such corporation. Such council, or other legislative body, shall make such regulations concerning the mode and manner of

carrying into effect the uses and purposes of such gift, bequest, or devise, as may be necessary and proper.

COMMISSIONERS' NOTE: This section is drawn from the act of February 10, 1881 (Stats. 1881, 2). The act of April 3, 1880 (Stats. 1880, 20), gave to the state, counties, cities and counties, cities or towns, power to receive donations, and provided that in case no designation was made of the uses and purposes of such donation, the same should be paid into the common school fund. The act of 1881 applied to counties and cities, and provided for the disposition by the council, or other governing body, when no provision was made by the donor as to the purposes of the gift. The subject-matter of the latter statute, so far as the same related to municipal corporations, is embodied here, and the recommendation is made that both the statute of 1880 and of 1881 be amended so as to apply only to the state in the first instance, and to the counties in the second instance, and that as so amended they be carried into the code in their proper place. The statute of March 9, 1885, relating to donations for parks (Stats. 1885, 38), should be repealed, as it is covered by the more general provisions of this section, and by the terms of the new charter for the city of San Francisco.

May levy tax for maintenance of parks.

SEC. 4385. The council, or other legislative body of any municipal corporation, is authorized and empowered to levy and collect an annual tax of not to exceed three cents upon every hundred dollars assessed valuation of property, real and personal, in such corporation for the purpose of establishing, maintaining, preserving and improving any public park or parks, or avenue or boulevard leading thereto. All moneys realized from such tax, or by gift, devise, or bequest for park purposes shall be known and designated as the park fund, and shall be kept and disbursed subject only to the order of the proper officers, boards, or commissioners having legal charge and control of the management and maintenance of such parks or boulevards.

COMMISSIONERS' NOTE: The preceding section was sections 1 and 2 of the act of March 8, 1887 (Stats. 1887, 52), here amended by striking out the provision limiting the levy of such a tax for use on parks of not less than ten acres. The provision as to counties is omitted.

May destroy municipal bonds, when.

SEC. 4387. Whenever there remains in the possession of any municipal corporation in this state any bonds voted to be issued for municipal purposes, which have been executed but not sold and disposed of, and the sale and disposal of such bonds shall be deemed by the council, or other legislative body of such corporation, to have become impossible or inexpedient, and that their destruction is desirable, it shall be lawful for said council, or other legislative body, to give public notice of its intention publicly to destroy such bonds, by a notice published for four successive weeks in the official newspaper of said corporation, if there

be such a newspaper, and otherwise, in any newspaper published and circulated in said municipal corporation which may be designated by said legislative body. Such notice shall specify the time and place of such intended destruction, and the reason alleged therefor, together with a general description of the character and amount of said bonds. And it shall be lawful for said legislative body, at the time and place and in accordance with the terms of said notice, publicly to destroy said bonds, unless at least three days prior to said time, written objections to such destruction shall be filed with the clerk of said municipal corporation, signed by a majority of the legal voters thereof, as appears by the vote cast at the last preceding general municipal election. No further or other issue of bonds in place of those thus destroyed shall be made by such municipal corporation, unless again authorized by a vote of the people as provided by law.

COMMISSIONERS' NOTE: The above section was the statute approved February 26, 1897 (Stats. 1897, 34).

May acquire gravel beds and quarries.

SEC. 4388. Any municipal corporation in this state may acquire, lease, purchase, and operate any gravel bed or quarry within the county where such corporation is situated, and may equip and operate a plant at such gravel bed or quarry, or within such municipal corporation, for the purpose of breaking, crushing, or otherwise preparing gravel or rock to be used in making, paving, improving, or repairing its streets. Any such municipal corporation may acquire, lease, or purchase and maintain all necessary roads, rights of way, and tramways over which to transport gravel or rock from such gravel bed or quarry to such corporation, and all necessary appliances for that purpose; *provided*, that no money shall be expended or expense incurred for any of the purposes set forth in this section unless the same is authorized at a regular meeting of the legislative body of such corporation, and by a vote of two thirds of the members thereof; *and provided further*, that this section shall not extend or enlarge any limitation upon municipal taxation, or the expenditure of municipal funds, now existing by reason of state laws, or city charters, in any of the municipal corporations of this state.

COMMISSIONERS' NOTE: This section was the act of March 27, 1897 (Stats. 1897, 217).

May lease lands to veteran associations.

SEC. 4388*a*. Any municipal corporation may lease or let for a period not exceeding twenty years, to any association of vet-

eran soldiers, sailors or marines, who have served the United States honorably in any of its wars, and who are organized for patriotic, fraternal, and benevolent objects in such municipality, to be used for the purposes of such association, any lot or public building, or any part thereof, belonging to such municipality, and not required for public use, at a rental to be fixed by the council or other legislative body of such municipality.

COMMISSIONERS' NOTE: This section was the act of March 11, 1897 (Stats. 1897, 113).

May grant franchises and privileges, for what.

SEC. 4389. The council, or other legislative body of any municipal corporation, may grant to any person, company, association, or corporation, franchises or privileges to erect or lay telegraph or telephone wires, to construct or operate street railroads, to lay pipes or erect poles for transmitting gas, steam, water, compressed air, heat or power, for lighting or other purposes, or to exercise any other privilege whatever, along, over, beneath, or upon any public street, alley, avenue, or highway, for a term not exceeding twenty-five years.

COMMISSIONERS' NOTE: The above is old section 4410 combined with section 1 of the act of March 13, 1897 (Stats. 1897, 135).

Reservations and conditions.

SEC. 4390. In exercising the authority mentioned in preceding section, the council, or other legislative body, must reserve the right to grant similar privileges to other persons, companies, associations, or corporations, and require the laying down of the pipes, erection of poles, or construction of conduits, to be under the reasonable direction of the municipal authorities, and to be so laid or constructed as to do no injury to the proper use of the paving, planking or macadamizing of the streets and alleys, nor to private property situate thereon.

COMMISSIONERS' NOTE: This was old section 4411 with slight amendments. Old section 4412 is omitted here, its provisions having been partly overruled by the act of March 26, 1895 (Stats. 1895, 191), embodied in section 4392, *post*.

Same.

SEC. 4391. In granting authority to lay down pipes, to erect poles, or construct conduits, and in contracting for gas, electricity, water, or other substances, the council, or other legislative body, must impose such restrictions and conditions, and provide for such locations and construction of gas, electric, and water works, pipes, wires, poles, and conduits as to work the least possible public or private inconvenience, and provide for enforcing such restrictions and conditions.

COMMISSIONERS' NOTE: This was old section 4418 with necessary amendments.

May contract for gas, electricity, and water.

SEC. 4392. The council, or other legislative body of any municipal corporation, may contract with any person, company, association, or corporation, for supplying the streets and public buildings with all gas, electricity, and water necessary for its proper use, but must reserve the right to abrogate such contract whenever gas, electricity, or water is offered to be supplied at two thirds of such fixed contract price.

COMMISSIONERS' NOTE: This was old section 4412, amended by adding electricity and striking out the five-year clause.

Restrictions and conditions.

SEC. 4393. Before any municipal corporation shall enter into any contract for gas, electricity, water, or power for public use of any kind, the council or other legislative body thereof shall advertise for bids therefor, and cause a notice to be posted in three public places in the corporation, inviting sealed proposals for the same, referring to the specifications posted or on file. The advertisement for bids shall be published for ten days, in the newspaper designated by such municipal corporation as its official paper, in which other legal notices, orders, and ordinances are required to be published, if there be any such official paper; but if there be no such official paper, then such advertisements for bids shall be published in any newspaper of general circulation designated by such council, or other legislative body; *provided*, that any municipality of less than ten thousand inhabitants may contract for street lighting at a price of ten dollars per month or less for each light of two thousand candle power without complying with the terms of this article.

Contracts must be let to lowest bidder.

SEC. 4394. All contracts for the lighting of streets, public buildings, and other public places, after bids have been advertised for and notice given, as provided in section 4393, shall be let to the lowest responsible bidder. The council, or other legislative body, may reject any and all bids.

Bids, how made. Length of contract.

SEC. 4395. Each bid shall be accompanied by a check, payable to the order of the mayor, or other chief officer of such municipal corporation, and certified by a responsible bank, for at least ten per cent of the amount of the bid, or by a bond for said amount, signed by the bidder and two sureties, or a satisfactory surety company, who shall qualify under oath in double said amount, over and above all statutory exemptions. Said bids shall be delivered in a sealed envelope to the clerk of

said council or other legislative body, and said body shall, in open session, open said bids, examine, and publicly declare the same. If none of said bids are accepted, a re-advertisement and notice for bids for such lighting shall then be had as provided for in the first instance. If any of said bids are accepted, then such council, or other legislative body of such municipal corporation, shall enter into a contract with the bidder whose bid is accepted, to do such lighting, which contract shall embody the specifications and terms for such lighting placed on file before any bids are advertised for. But no contract shall be made for a longer period than one year, and every such contract shall go into effect within six months after the bid is approved. Any check or bond accompanying any unaccepted bid shall be returned to the party furnishing the same, when his bid is rejected; any check or bond accompanying any accepted bid shall be retained by the clerk till the successful bidder shall have entered into a contract as herein provided, and then be returned to said bidder; but if such bidder shall refuse to enter into such contract, his check or bond shall be declared forfeited to such municipal corporation, and shall be collected and paid into the general fund thereof.

COMMISSIONERS' NOTE: The preceding three sections comprised the act of March 26, 1895 (Stats. 1895, 191), as amended March 27, 1897 (Stats. 1897, 210).

May fix rates for water, heat, light or power.

SEC. 4396. The council, or other legislative body of any municipal corporation, may fix and determine by ordinance in the month of February of each year, to take effect on the first day of July thereafter, the rates or compensation to be collected by any person, company, association, or corporation within such municipality, for the use of water, heat, light or power supplied thereto, or to the inhabitants thereof, and to prescribe the quality of the service.

COMMISSIONERS' NOTE: The above section is substantially section 1 of the act of March 7, 1881 (Stats. 1881, 54), and is intended to enable municipal corporations to control and regulate the price of other utilities, as well as of water. The statute of March 8, 1878 (Stats. 1877–78, 107) to regulate the quality and price of gas in the city of San Francisco, should be repealed, as the subject-matter thereof is provided for in the new charter of said city. The remainder of the act of 1881 is here incorporated, with such changes as were necessary to make it apply to heat, light, and power, as well as to water.

Annual statements to be made by water companies, etc.

SEC. 4397. The council, or other legislative body of any municipal corporation, shall, at least thirty days prior to the fifteenth day of January of each year, require by ordinance or

otherwise any person, company, association, or corporation, supplying water, heat, light, or power to such municipal corporation, or to the inhabitants thereof, to furnish to such council, or other legislative body, in the month of January in each year, a detailed statement, duly verified, showing the name of such water, heat, light or power rate-payer, his or her place of residence, and the amount paid for water, heat, light or power, by each of such rate payers during the year preceding the date of such statement, and also showing all revenue derived from all sources, and an itemized statement of expenditures made for supplying water, heat, light, and power during said time.

Additional statement.

SEC. 4398. Accompanying the first statement made, as prescribed in section 4397, every such person, company, association, or corporation shall furnish a detailed statement, verified in like manner as the statement mentioned in section 4397, showing the amount of money actually expended annually, since commencing business, in the purchase, construction and maintenance, respectively, of the property necessary to the carrying on of its business, and also the gross cash receipts annually, for the same period, from all sources.

Refusal to make statement a misdemeanor.

SEC. 4399. Every person, company, association, or corporation, who shall refuse or neglect to furnish the statements mentioned in sections 4397 and 4398, or either of them, or who shall furnish any false statement of relation thereto, within thirty days after having been required or requested to furnish the same as prescribed in sections 4396, 4397 and 4398, shall be deemed guilty of a misdemeanor.

Copy of statement to be filed.

SEC. 4400. Upon receiving the statements provided for in sections 4397 and 4398, the council, or other legislative body, shall cause a copy thereof to be made and filed in the office of the county recorder of the county wherein such municipal corporation is situated.

Rates to be equal.

SEC. 4401. Rates for the furnishing of water, heat, light or power, shall be equal and uniform. There shall be no discriminations made between persons, or between persons and corporations, or as to use for private and domestic, and public or municipal purposes; *provided*, that nothing herein shall be so construed as to allow any person, company, association, or

corporation to charge any person, corporation, or association anything for water, heat, light or power furnished them when, by any present law, the same is free.

Excess in charging rates, forfeits franchise, etc.

SEC. 4402. Any person, company, association, or corporation charging, or attempting to collect from the persons, corporations, or municipalities using water, heat, light or power, any sum in excess of the rate fixed as hereinbefore designated, upon the complaint of said council, or other legislative body thereof, or of any rate payer, and upon conviction before any court of competent jurisdiction, shall forfeit the franchises and works of such person, company, association, or corporation to the municipality wherein the said water, heat, light, or power is furnished and used.

Penalty to council neglecting to enforce act.

SEC. 4403. Any council or other legislative body of any municipal corporation which shall fail or refuse to perform any of the duties prescribed by sections 4396, 4397 and 4400, at the time and in the manner hereinbefore specified, shall be deemed guilty of malfeasance in office, and upon conviction thereof, at the suit of any interested party, in any court of competent jurisdiction, shall be removed from office.

May provide for sale of excess of water.

SEC. 4404. Whenever the water supply owned by any municipal corporation is in excess of the amount required to supply the water required by the inhabitants thereof, it may be declared by ordinance that such excess exists, and thereupon such excess of water may be sold outside of the limits of the corporation; but in no case shall a contract be made for a supply of any excess of water sold by a municipal corporation outside the corporate limits for a period longer than one year; and in no case shall such a contract be made unless the council, or other legislative body, declare by ordinance that there exists an excess of water not required to supply the inhabitants of such municipality within the term of the contract, but excess of water may be sold outside the corporate limits from month to month during the existence of such excess, and shall be sold only at the rates fixed for consumers inside the corporate limits.

COMMISSIONERS' NOTE: This section is the act of March 27, 1897 (Stats. 1897, 182), with necessary amendments.

Must provide for annual vacations for police and firemen.

SEC. 4405. In every municipal corporation of this state where there is a regularly organized paid police force, or fire department, the council, commissions, or other body having the management and control of the same, are authorized and required once in every year to provide for granting each member thereof a leave of absence from active duty for a period of not less than ten nor more than fifteen days. Leaves of absence so granted must be arranged by said council, board, or commission so as not to interfere with the police or fire protection of any such municipal corporation, or to impair in any way the efficiency of the police or fire department thereof; and leaves of absence granted in case of sickness or in consequence of wounds or injuries received while in the discharge of duty shall not be construed to be or become a part of the leave of absence provided for by this section. No deduction shall be made from the pay of any member of either such police or fire department granted a leave of absence under provisions of this section.

COMMISSIONERS' NOTE: The above section is the acts of March 10, 1891 (Stats. 1891, 47), and of March 26, 1895 (Stats. 1895, 76), here combined so as to apply to both police and fire departments.

Of certain classes, may increase police force.

SEC. 4406. The council, or other legislative body of municipal corporations of the first, second, or fourth classes, are hereby authorized and empowered to increase the police force of their respective municipalities, from time to time, as may be deemed necessary by said council, or other legislative body; *provided*, that the police force in any municipality shall not exceed in the aggregate, at any time, one member for every five hundred inhabitants thereof; *provided further*, that in cities of the third class the police force shall not exceed in the aggregate, at any time, one member for every one thousand inhabitants of said cities, according to the latest census of the United States; said additional police force to be appointed by the board of police commissioners, or other board or authority now by law empowered to appoint police officers in their respective municipalities. The salary of such additional police officers shall be the same as is now paid by law to the other members of such police force in their respective municipalities; and said additional police officers shall be paid at the same time, and in the same manner and out of the same fund as the other members of their respective police forces are now or shall hereafter be paid.

COMMISSIONERS' NOTE: This section is the act of February 24, 1891 (Stats. 1891, 10). Its utility is questionable, but is inserted for consideration by the Legislature.

Quorum.

SEC. 4407. A majority of the members of the council, or other legislative body of a municipal corporation, constitutes a quorum to do business; but a less number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as may be, by ordinance, prescribed.

COMMISSIONERS' NOTE: This is old section 4406.

Power over its own members.

SEC. 4408. The council, or other legislative body of any municipal corporation, is the judge of the qualification, elections, and returns of its own members, and the other officers elected under the provisions of this title. They may determine contested elections; they may provide rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and, with the concurrence of two thirds of their number, expel any member; they must keep a journal of their proceedings, and at the desire of any member must cause the yeas and nays to be taken and entered on any question; and their proceedings must be public.

COMMISSIONERS' NOTE: This is old section 4407. Old section 4408 has been retained as section 4421*f*, which see. The provision as to second expulsion is omitted for obvious reasons.

May incur indebtedness.

SEC. 4410. Any municipal corporation may, as hereinafter provided, incur indebtedness to pay the cost of any municipal improvement, or for any purpose whatever requiring an expenditure greater than the amount allowed for such improvement by the annual tax levy.

Manner of procedure.

SEC. 4411. Whenever the council, or other legislative body, of any municipal corporation shall, by ordinance passed by a vote of two thirds of all its members, and approved by the executive of said municipal corporation, determine that the public interest or necessity demands the acquisition, construction or completion of any municipal buildings, bridges, waterworks, water rights, sewers, or other municipal improvements, the cost of which will be too great to be paid out of the ordinary annual income and revenue of the municipality, they may, after publication of such ordinance for at least two weeks in some newspaper published in such municipality, and at their next regular meeting after such publication, or at an adjourned

meeting, by ordinance passed by a vote of two thirds of all its members, and also approved by said executive, call a special election and submit to the qualified voters of said municipal corporation the proposition for the purpose set forth in the ordinance, and no question other than the incurring of indebtedness for said purpose shall be submitted. The ordinance calling such special election shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated costs of the proposed public improvement, the necessity for such improvement, and that bonds of the municipality shall issue for the payment of the cost of such improvement, as in such ordinance set forth, if the proposition be accepted by the qualified voters, as hereinafter provided, and shall fix the day on which such special election shall be held, the manner of holding such election, and the voting for or against incurring such indebtedness; such election shall be held as provided by law for holding such elections, in such municipal corporation; *provided, however*, that where, by the terms or provisions of the charter of any municipal corporation, the cost of making the proposed improvement is to be or must be paid from a special fund created by such charter for that purpose, the proposition of incurring such an indebtedness may be submitted to the qualified voters at any general election for officers of the state of California or of such municipal corporation.

Publication of intention.

SEC. 4412. Such ordinance shall be published once a day for at least ten days, or once a week for two weeks, before the publication of the notice of the special election, in some newspaper published in such municipality. After such publication, said council, or other legislative body, shall cause to be published, for not less than two weeks, in at least one of the newspapers published in such municipality, a notice of such special election, the purpose for which the indebtedness is to be incurred, the number and character of the bonds to be issued, the rate of interest to be paid, and the amount of tax levy to be made for the payment thereof. It shall require the votes of two thirds of all the voters voting at such special election to authorize the issuance of the bonds herein provided.

Plans and estimates of improvements.

SEC. 4413. It shall be the duty of the council, or other legislative body of any municipality contemplating permanent public improvements, to first have plans and estimates of the cost of such improvements, made by a competent engineer or

architect who has had successful experience in such work, before the question of incurring an indebtedness for such improvements is submitted to vote.

Limit of indebtedness.

SEC. 4414. No municipal corporation shall incur an indebtedness for public improvements which shall, in the aggregate, exceed fifteen per cent of the assessed value of all the real and personal property of such municipal corporation.

Character of bonds.

SEC. 4415. All municipal bonds for public improvements issued under the provisions of this article shall be of the character of bonds known as serials, and shall be payable in gold coin or lawful money of the United States, in the manner following: One fortieth part of the whole amount of indebtedness shall be paid each and every year, on a day and at a place to be fixed by the legislative body of the municipality issuing the bonds, together with the interest on all sums unpaid at such date. The bonds shall be issued in such denominations as the council or other legislative body of the municipality may determine, except that no bonds shall be of a less denomination than one hundred dollars, nor of a greater denomination than one thousand dollars, each, payable on the day and at the place fixed in such bond, and with interest at the rate specified in the bond, which rate shall not be in excess of the legal rate of the state of California, and may be payable annually or semi-annually. Such bonds may be issued and sold by the council or other legislative body of the municipal corporation, as they may determine, at not less than their face value, in gold coin of the United States, and the proceeds of such sale shall be placed in the municipal treasury to the credit of the proper improvement fund, and shall be applied exclusively to the purposes and objects mentioned in the ordinance until such objects are fully accomplished, after which, if any surplus remains, such surplus shall be transferred to the general fund of such municipality.

Form of bond.

SEC. 4415*a*. Bonds issued under authority of this chapter shall be substantially of the following form:

No.———

United States of America, state of California, city of———.

Bond.

(Place and date.)

On the ——— day of ———, A. D. ——, the city of ——— will pay to the bearer, at the office of the city treasurer, in the city of ———, the sum of ———, with interest thereon at the rate of ——— per annum, payable semi-annually on the first day of January, and the first day of July, at the office of said city treasurer, upon the presentation and surrender of the interest-bearing coupons hereto attached. Principal and interest payable in gold coin of the United States.

This bond is issued in pursuance of the provisions of the laws of the state of California, authorizing the incurring of indebtedness by cities for the construction of public improvements. It is further certified that all the requirements of law, and of the charter and ordinances of the city of ——— have been fully complied with by the proper officer in the issuing of this bond; that this issue of bonds has been authorized by a vote of two thirds of the duly qualified electors of said city voting on the question of such issue at a special election duly and regularly called and held in said city voting on the question of said issue, together with the outstanding bonded indebtedness of said city, does not exceed the limit prescribed by the Constitution and laws of the state of California.

———————,
Mayor of the city of———.

———————,
Treasurer of the city of———.

Countersigned by

———————,
City clerk.

The interest-bearing coupons shall be substantially as follows:

$——— On the first day of ———, A. D. ———, the city of ——— promises to pay to the bearer, at the office of the city treasurer of ———, the sum of ——— dollars in gold coin of the United States, the semi-annual interest due on bond number ———.

———————,
Treasurer of the city of———.

Rate of interest.

SEC. 4416. The council, or other legislative body of any municipal corporation, issuing bonds under authority of this chapter, shall have the right to determine the rate of interest such bonds shall bear; *provided*, that in no case shall it exceed the legal rate of the state of California, and to name the date

and place where such bonds and interest shall be paid; *provided*, that the place of payment shall be at the office of the treasurer of the municipality issuing such bonds. The said bonds shall be signed by the executive of the municipality, and also by the treasurer thereof, and shall be countersigned by the clerk. The coupons of said bonds shall be numbered consecutively, and signed by the treasurer.

COMMISSIONERS' NOTE: The last preceding section is amended by requiring the place of payment of said bonds to be at the office of the treasurer of the municipality. This is rendered necessary by the decision of the supreme court in the case of *The City of Los Angeles* vs. *Teed*, 112 Cal. 319.

Tax levy.

SEC. 4417. The council, or other legislative body of said municipal corporation, shall, at the time of fixing the general tax levy, and in the manner for such general levy provided, levy and collect annually, for the term of forty years, a tax sufficient to pay the annual interest on such bonds, and also one fortieth part of the aggregate amount of such indebtedness so incurred. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time and in the same manner as other municipal taxes are collected.

Duty of corporation as to maintenance of improvements.

SEC. 4418. It shall be the duty of the council, or other legislative body of every municipal corporation, wherein public improvements are being made under the provisions of this chapter, to make all needful rules and regulations for carrying out and maintaining such improvements, to appoint all needful agents, superintendents, and engineers to properly look after the construction and operation of such public works, and in all lawful ways to protect and preserve the rights and interest of the municipality; *provided, however*, that in municipalities operating under a charter heretofore or hereafter framed under section 8 of article XI of the constitution, and having a board of public works, all the matters and things required in this section to be done and performed by the council or other legislative body of the municipality shall be done and performed by the board of public works of such municipality.

Letting of contracts.

SEC. 4419. All contracts for the construction or completion of any public work or improvements, or for furnishing labor or materials therefor, as herein provided, shall be let to the lowest responsible bidder. The council, or other legislative body of

the municipality, shall advertise for at least ten days, in one or more newspapers published in the municipality, inviting sealed proposals for furnishing the labor and materials for the proposed improvements, before any contracts shall be made therefor. The council, or other legislative body, shall have the right to require such bonds as they may deem best, from the successful bidder, to insure the faithful performance of the contract work. They shall also have the right to reject any or all bids; *provided*, *however*, that in municipalities operating under a charter heretofore or hereafter framed under section 8 of article XI of the constitution, and having a board of public works, all the matters and things required in this section to be done and performed by the council, or other legislative body of the municipality, shall be done and performed by the board of public works of such municipality.

COMMISSIONERS' NOTE: The foregoing ten sections were comprised in the act of March 19, 1889 (Stats. 1889, 399), as amended March 11, 1891 (Stats. 1891, 84 and 94), March 19, 1891 (Stats. 1891, 132), and March 1, 1893 (Stats. 1893, 61). On March 9, 1897 (Stats. 1897, 75) an act was passed authorizing any incorporated city or town, other than cities of the first class, to refund its indebtedness. This act specifically provided that "chapter 82 of the Statutes of 1883" (Stats. 1883, 370), "chapter 48 of the Statutes of 1893" (Stats. 1893, 61), "and chapter 176 of the Statutes of 1895" (Stats. 1895, 203), "all being laws in conflict herewith, are hereby repealed." Chapter 82 of the acts of 1883, and chapter 176 of the acts of 1895, were in conflict with said act of 1897 (Stats. 1897, 75), but chapter 48 of the acts of 1893 was not in conflict therewith, being an act for the issuing of improvement bonds, and not connected with or appertaining to the act of 1897, which is the refunding act. Chapter 47 of the acts of 1893 (Stats. 1893, 59), is an act appertaining to the refunding of municipal indebtedness, and it was evidently a clerical error on the part of the legislature in providing for the repeal of chapter 48, the manifest intention being to repeal chapter 47. The commissioners, therefore, have retained the provisions of said chapter 48, which will be found embodied in sections 4415 and 4417. Both of the chapters referred to should be repealed upon the adoption of this code, as should also the act of 1889, as amended, its provisions being included herein. Section 11 of said act is omitted here, for the reason that it is sufficiently covered by section 4363, *ante*.

Since the above was written the supreme court has held in the case of the *City of L. A.* vs. *Hance*, that section 6 of the act of March 19, 1889 (Stats. 1889, 399), as amended March 1, 1893 (Stats. 1893, 61), was not repealed by the act of March 9, 1897 (Stats. 1897, 399).

May refund indebtedness.

SEC. 4420. The council, or other legislative body of any municipal corporation, having an outstanding indebtedness, evidenced by bonds or warrants thereof, is empowered by a two-thirds vote of its number, to fund or refund the same, and issue bonds of such municipality therefor in sums of not less than one hundred dollars nor more than one thousand dollars each, and having not more than forty years to run, and bearing a rate of interest not exceeding six per cent per annum, pay-

able annually, or semi-annually; *provided*, that no indebtedness shall be refunded at a higher rate of interest than that borne by the original debt. Such bonds shall be of the character known as "serials," not less than one fortieth of the principal being payable each year, together with the interest due on all sums unpaid. Principal and interest on said bonds shall be payable in gold coin or other lawful money of the United States, as may be expressed in said bonds, at the office of the treasurer of said municipality. Said bonds shall be sold in the manner provided by such council or other legislative body, to the highest bidder therefor, for not less than their face value, in the same character of money as that in which they are payable. The proceeds of such sale shall be placed in the treasury of such municipal corporation to the credit of the "funding fund," and shall be applied only to refunding indebtedness for which said bonds were issued. Said council, or other legislative body, shall at the time for fixing the general tax levy for each year, and in the same manner as such tax levy is made, levy and collect sufficient money to pay one fortieth part of the principal of said bonds issued under this chapter, and also the annual interest upon the sums unpaid.

Duty of treasurer.

SEC. 4421. Whenever sufficient money is in the funding fund, in the hands of the treasurer, to redeem one or more of the outstanding bonds proposed to be refunded, he shall publish once a week for two weeks, in some newspaper of general circulation published in such municipality, if there be any, a notice to the effect that he is prepared to pay such bond or bonds (giving the number thereof), and if the same are not presented for redemption within thirty days after the first publication of such notice, the interest on such bonds will cease. He shall, at the same time, deposit in the postoffice a copy of such notice, inclosed in a sealed envelope, with the postage paid thereon, addressed to the owner or owners of such bond or bonds, at the postoffice address of such owner or owners, as shown by the record thereof kept in the treasurer's office. If such bond or bonds are not presented within the time specified in such notice, the interest thereon shall then cease, and the amount due be set aside for the payment of the same, whenever presented. All redemption of bonds shall be made according to the priority in order of their issuance, beginning at the first number. Whenever such outstanding bonds are surrendered

and paid, the treasurer shall proceed to cancel the same by indorsing on the face thereof the amount for which they are received, the word "canceled" and the date of cancellation. He shall also keep a record of such bonds so redeemed, and shall make a report of the same to the council, or other legislative body of such municipality, at least once a month, accompanying the same therewith by the bonds which have been taken up and canceled. All moneys which shall remain in said funding fund, after all outstanding bonds as were proposed to be refunded have been taken up and canceled, shall be paid into the general fund of such municipal corporation, and become a part thereof.

COMMISSIONERS' NOTE: The two preceding sections are drawn from the act of March 9, 1897 (Stats. 1897, 75), referred to in the note to section 4419, *ante*, which see. Said act excepted from its operations cities of the first class, but that exception has been stricken out, as there seems to be no good reason for excluding any class of municipal corporations from the privilege of refunding its indebtedness at a lower rate of interest, if possible.

The provisions of old sections 4445, 4446, 4447, and 4448, are sufficiently covered by the two preceding sections, if, indeed, the provisions of said old sections have any validity or force. For a thorough discussion of said sections, see *City of Los Angeles* vs. *Teed*, 112 Cal. 319. Section 4449 has been omitted as unnecessary and useless.

How franchises are granted.

SEC. 4421*a*. Every such franchise provided for in section 4389, except for paths or roads for bicycles, and other horseless vehicles propelled by the rider, steam railroads, telegraph lines, and renewal of franchises for piers, chutes, and wharves, shall be granted upon the conditions herein provided, and not otherwise. The fact that an application for such franchise or privilege has been made to such council, or other legislative body, together with a statement that it is proposed to grant the same, must first be advertised in one or more newspapers of the municipality wherein the said franchise or privilege is to be exercised. Such advertisement must state that bids will be received for such franchise, and that it will be awarded to the highest bidder, and such advertisement must be published in such daily newspaper once a day for ten successive days, if in a daily newspaper, and if there be no daily newspaper published in such municipality, then it shall be published in a weekly newspaper published in such municipality, once a week for four weeks, and in either case the full advertisement must be completed not less than twenty nor more than thirty days before any further action of the council, or other legislative body. The advertisement must state the character of the franchise or privilege proposed to be granted, the term of its continuance,

and if a street railroad, the route to be traversed; that sealed bids or tenders will be received up to a certain hour on a day named therein, and a further statement that no bids will be received of a single sum or amount stated, but that all bids must be for the payment in lawful money of the United States of a stated per cent. of the gross annual receipts of the person, company, association, corporation, or other authority to whom the franchise is awarded, arising from its use, operation, or possession. No percentage shall be paid for the first five years succeeding the date of the franchise, but thereafter such percentage shall be payable annually, and shall in no case be less than three per cent per annum upon such gross receipts, the franchise to be forfeited by failure to make the payments stated in the bids upon which the award was made; *provided*, the council, or other legislative body, may provide as a condition of such franchise that the payments of said percentage shall begin at any time less than five years after the franchise is granted, if such franchise is a renewal, or substantially a renewal, of a franchise already in existence. After the expiration of the time stated in the advertisement up to which sealed bids or proposals will be received, the council, or other legislative body herein mentioned, must meet in open session and open and read the tenders or bids. The franchise or privilege must then be awarded to the highest bidder; *provided, however*, that if at the time of opening said bids, a higher or better offer be made in writing by a responsible bidder, it shall be in the discretion of the council, or other legislative body, to accept such offer, and award the franchise or privilege to such last named bidder; *and provided further*, that nothing in this section shall affect a special privilege, granted for a shorter term than two years; *and provided further*, that any or all bids may be rejected; *and provided further*, that unless the bidder shall file with his bid a bond to such municipality, with at least two good and sufficient sureties to be approved by such council, or other legislative body, in a penal amount to be by it prescribed and set forth in the advertisement for bids, conditioned that such bidder shall well and truly observe, fulfill, and perform each and all of the terms, conditions, and obligations of such franchise, in case the same shall be awarded to him, and that in case of any breach or condition of such bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond, no award of any such franchise shall be made upon such bid, although the

same may be the highest, but such franchise may be awarded to the next highest bidder, who shall have complied with this proviso, or, in the discretion of such council, or other legislative body, all bids may be set aside and rejected, and new bids advertised for.

Extension and forfeiture of franchises.

SEC. 4421*b*. No franchise now existing, or which may hereafter be granted, shall be renewed by the council, or other legislative body above described, nor shall the extension or renewal of the same be advertised or offered for sale by such council, or legislative body, until within one year prior to the date of the expiration of the existing franchise, unless the existing franchise is first surrendered by the holders thereof; *provided*, no franchise can be surrendered without the consent of the council, or other legislative body of the municipality granting such franchise; *and provided further*, that on the application of the mayor, or a majority of the council, or other legislative body above described, it shall be the duty of the attorney-general to sue for a forfeiture of any franchise granted by such legislative body, alleging in such suit non-compliance with the terms of the franchise.

Violation of provisions a misdemeanor.

SEC. 4421*c*. Any member of any council, or other legislative body of any municipal corporation of this state, who, by his vote, violated or attempts to violate the provisions of this chapter, or any of them, shall be guilty of a misdemeanor and of malfeasance in office, and be deprived of his office by the decree of a court of competent jurisdiction, after trial and conviction.

COMMISSIONERS' NOTE: The preceding four sections constituted the act of March 13, 1897 (Stats. 1897, 135). The only amendment of importance is embodied in the provision for raising bids at the time of opening and reading the same. There would seem to be no good reason why the municipality should be deprived of the possibility of obtaining a better offer at that time, nor does it appear that the amendment suggested could work any hardship upon bidders. The minimum bid is not changed, while opportunity is given for offers more advantageous to the public to be accepted.

The act of March 19, 1897 (Stats. 1897, 177), and the act of March 23, 1893 (Stats. 1893, 288), amended thereby, should both be repealed, as their provisions are fully covered by the said act of March 13, 1897, and the provisions of the county government law.

The above and following sections are made to apply to the case of franchises granted by counties, by proper reference hereto in the provisions of the code relating to the powers of boards of supervisors, and the government of counties.

When street railway franchises may not be granted.

SEC. 4421*d*. It shall be unlawful for the council, or other legislative body of any municipal corporation, within ninety

days next preceding the date of holding a general election, and within seventy days next immediately following, including the day of holding such general election, to authorize or pass any ordinance, order, or resolution granting to any person, company, association, or corporation whatsoever, any privilege or franchise for the construction, extension, or operation of any street railroad, or extension of time for the construction or operation of any street railroad, over or upon any or part of any street, road, highway, squares, or park within such municipality. Any franchise or privilege granted, or attempted to be granted, in violation of, or contrary to, the provisions of this section, shall be absolutely void and of no effect.

COMMISSIONERS' NOTE: This section was the act of February 24, 1893 (Stats. 1893, 29). It originally applied only to counties and cities and counties. It is here made general in its application. Its provisions are probably of very doubtful utility, but if desirable at all should certainly apply to all municipalities. Application to counties is stricken out, as the chapter deals only with municipal corporations, and counties are included in its provisions by proper reference to the section. See note to preceding section.

Franchises for bicycle, etc. Paths and roads.

SEC. 4421*e*. The council, or other legislative body of any municipal corporation, may, under such regulations, restrictions, and limitations as it may provide, subject to laws now existing or that may hereafter be adopted, grant franchises for the construction of paths and roads, either on the surface, elevated or depressed, on, over, across, or under the streets and public highways of any such municipality, for the use of bicycles, tricycles, motor cycles, and other like horseless vehicles, propelled by the rider, for a term not exceeding fifty years; *provided*, that no franchise shall be granted for the purpose herein expressed, unless the consent in writing of the owners of a majority of the frontage upon the road or street along which said path or road is sought to be constructed, be first had and obtained and filed with such council or other legislative body.

COMMISSIONER'S NOTE: The section was the act of March 27, 1897 (Stats. 1897, 191). It applied to the counties as well, but is here limited to municipal corporations, and made to apply to counties by other provisions. See note to section 4421*d*.

Other powers.

SEC. 4421*f*. The council, or other legislative body of every municipal corporation, in addition to the specific powers hereinbefore granted, has power:

1. To manage the finances and property of the municipality.

2. To regulate the streets, wharves, piers, and chutes, and the use thereof, in the municipality.

3. To establish or authorize slaughter-houses and markets, and regulate the same.

4. To provide for lighting, watering, and cleaning the municipality, and protecting it against fire.

5. To license and regulate hacks, cabs, carts, omnibuses, railway cars, and all other vehicles, butchers, porters, pawnbrokers, peddlers, showmen, and junk-shop keepers, theaters, and all other places of public amusement.

6. To provide for licensing any or all business not prohibited by law, and fix the amount of license tax for the same.

7. To regulate the keeping and use of animals, and the keeping and use of gunpowder, and other dangerous substances.

8. To suppress gaming, gambling houses, and other disorderly houses, nuisances of every description, and all kinds of vice and immorality.

9. To regulate or prohibit the burial and exhuming of the dead within the municipality, except at such places and in such manner as it may determine, and to provide for the removal from cemeteries within the boundary lines thereof, or from cemeteries owned and controlled by such municipality that may have been located without its boundaries (and in which such cemeteries no interments of human remains have been made for a period of not less than two years), of all the human remains interred in such cemeteries.

10. To establish and regulate a police department.

11. To establish and regulate a fire department.

12. To impose penalties for the violation of ordinances; but no single penalty must exceed a fine of five hundred dollars, or imprisionment for ten days, or both.

13. To impose and appropriate fines, penalties, and forfeitures for breaches of ordinances.

14. To make by-laws and ordinances not repugnant to the Constitution and the laws of the United States or of this state.

15. To require any land or building to be cleansed and kept in order at the expense of the owner or occupant, and, upon his default, may do the work and assess the expense upon the land or building.

16. To establish a board of health to prevent the introduction and spreading of disease, and to ordain and adopt for the government of the municipality such "quarantine" or "health regulations" as they may deem necessary.

17. To levy and collect taxes, to lay out, extend, alter, or widen streets and alleys, and make appropriations for any object of municipal expenditures.

18. To erect and maintain poorhouses and hospitals, and pass such by-laws and ordinances for the regulation of the police as they may deem necessary. All ordinances must be published in the manner prescribed by the council, or other legislative body.

COMMISSIONERS' NOTE: This was old section 4408. The first two subdivisions have been omitted. There was added to subdivision 11 the provisions of the statute of March 23, 1893 (Stats. 1893, 234), as amended in 1895 (Stats. 1895, 157), relating to the removal of human remains. In *Ex parte Campbell*, 74 Cal. 20, the supreme court held that old section 4408 was unconstitutional, but such dictum was evidently an error, and the section is therefore retained.

All ordinances must be presented to mayor. How passed over veto.

SEC. 4421*g*. Every ordinance and every resolution of the council, or other legislative body of any municipality; providing for any specific improvement, or the granting of any franchise, or other privilege, or affecting real property interests, or the expenditure of more than one hundred dollars of the public moneys, or levying tax or assessment, or establishing rates for artificial light, heat, or power, and every ordinance or resolution imposing a duty or penalty, which shall have passed the council, or other legislative body, shall, before it takes effect, be presented to the mayor, or other chief executive officer, for his approval. Such executive officer shall return such ordinance or resolution to the council, or other legislative body, within ten days after receiving it. If he approve it he shall sign it, and it shall then take effect. If he disapprove it he shall specify his objections thereto in writing. If he do not return it with such disapproval within the time above specified, it shall take effect as if he had approved it. His objections shall be entered at large upon the journal of the council, or other legislative body, and said body shall cause the same to be immediately published. The council, or other legislative body, after five, and within thirty days after such ordinance or resolution shall have been returned with the mayor's disapproval, shall reconsider and vote upon the same; and if the same shall, upon reconsideration, be again passed by the affirmative vote of not less than three fourths of all the members, the presiding officer shall certify that fact on the ordinance or resolution, and when so certified, it shall take effect as if it had received the approval of such executive officer; but if the ordinance or

resolution shall fail to receive, upon the first vote thereon after its return with his disapproval, the affirmative votes of three fourths of all the members, it shall be deemed finally lost. The vote on such reconsideration shall be taken on ayes and noes, and the names of the members voting for or against the same shall be entered in the journal; *provided*, that the provisions of this section shall not apply to cities in which the mayor is a member of the council or other legislative body. In municipalities in which there is no mayor, then the duties imposed upon the mayor by the provisions of this section shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

COMMISSIONERS' NOTE: The above section was the act of March 27, 1897 (Stats. 1897, 190), and is here substituted in the place of old section 4414, which related to the same subject-matter. Said statute was, perhaps, unnecessarily prolix, but as it makes some changes in the former code section, notably that of requiring three fourths, instead of two thirds of the votes of all the members to pass an ordinance over the mayor's veto, and because it is so late an expression of the legislative will, it is inserted here without change, except to omit the definitions of certain terms therein used, and which are deemed unnecessary.

ARTICLE III.

JUDICIAL POWERS.

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Section 4424*l*. Offenses triable in said courts, how conducted.
4424*m*. Civil actions, how conducted.
4424*n*. In municipal corporations of the third and fourth class.

COMMISSIONERS' NOTE: In the preparation of this article, as in other matters relating to municipal corporations, the Commissioners have assumed that the charter lately adopted by the city of San Francisco will be ratified by the legislature, and as there is no other municipality of the first class in the state, have adopted the provisions of said charter relating to police courts for incorporation in the statutes. For municipal corporations of the second class, the provisions of the so-called Whitney act (Stats. 1885, 213), slightly modified, have been adopted, omitting from said act section 6½ thereof, as adopted in 1893 (Stats. 1893, 41), on the ground of unconstitutionality. For municipal corporations of the third and fourth class, the provisions of the statutory charter for cities of the third class have been adopted, the same being more simple and more satisfactory than those pertaining to cities of the fourth class. As the statutory charters for municipal corporations of the fifth and sixth class have been carried into the code, it was not deemed necessary to do more than refer to the provisions thereof as to the judicial powers of cities of those classes.

In what courts vested.

SEC. 4422. The judicial powers of municipal corporations shall be vested in courts to be constituted and held therein as provided in and by the respective charters, general or special, or the special acts under which said municipalities are now organized, or that may hereafter be adopted by them, and in the absence of any provisions to the contrary in such charters or acts, said courts shall be established, composed, constituted, and governed as in this article provided.

COMMISSIONERS' NOTE: This section is new.

In municipal corporations of the first class.

SEC. 4423. There is hereby created and established in and for every municipal corporation of the first class a police court, which shall consist of four judges, who shall be elected by the people and hold office for four years. They shall each receive an annual salary of thirty-six hundred dollars. They shall be electors of the municipality at the time of their election, and must have been such for at least five years next preceding such time. No person shall be eligible to the office of judge of the police court who is not at the time of his election qualified to practice in all the courts of this state, and who has not been so qualified for at least five years next preceding his election. The court shall be divided into departments known as department number one, department number two, department number three, and department number four. The judges of such court may hold as many sessions of the court at the same time as there are judges thereof. The judges who shall be elected at the first election

after the adoption of this code, shall so classify themselves by lot that two of them shall go out of office in two years and two of them in four years. They shall choose from their number a presiding judge, who shall serve for one year. The presiding judge shall assign the judges to their respective departments; but any of the judges may preside in any of the departments in the absence or inability of the judge regularly assigned thereto. The judgments, orders, and proceedings of any session of the court held by any one or more of the judges shall be equally effectual as if all the judges had presided at such session.

Jurisdiction.

SEC. 4423*a*. Said police court shall have:

First—Exclusive jurisdiction of all prosecutions for the violation of ordinances of the council, or other legislative body.

Second—Concurrent jurisdiction with the superior court of all other misdemeanors, and of the examination of all felonies committed in the municipality.

Third—Said court, or any judge thereof, shall have the same powers in all criminal actions, cases, examinations, and proceedings as are now or may hereafter be conferred by law upon justices of the peace.

Procedure—provisos.

SEC. 4423*b*. Proceedings in said court shall be conducted in accordance with the laws of this state regulating proceedings in justices' and police courts and appeals to the superior court; and said court, or any judge thereof, shall have the same power in all criminal actions, cases, and proceedings as are now or may hereafter be conferred by the general law of this state upon justices of the peace; *provided, that:*

First—No case shall be dismissed, or fine imposed, until the testimony for the prosecution shall be taken.

Second—Any defendant who neglects to file his statement on appeal within ten days after sentence, shall lose his right to appeal, unless good cause for the delay be shown by affidavit. Press of business on the part of defendant's attorney shall not be deemed good cause for delay. Unless the district attorney shall file amendments to the proposed statement on appeal within five days after the same shall have been filed and served, the proposed statement on appeal shall be the statement on appeal. The judge before whom the case was tried shall settle the statement on appeal within five days after the district attorney shall have filed his amendments to the proposed statement.

Third—Any person who shall solicit, or importune, any of said judges, either before or after judgment, to dismiss a case or mitigate a sentence, unless the same be done in open court, shall be guilty of contempt of court.

Fourth—A complaint may be demurred to on the ground that it does not set forth the offense charged with such particularities of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and the complaint may be amended by permission of the court after a demurrer is sustained.

Fifth—A defendant in custody shall have the right to be tried before a defendant on bail, and felonies shall be heard before misdemeanors.

Sixth—The judges of said court shall try all cases as speedily as possible, and must refuse continuances after the first calling of a case for trial, except upon affidavits showing good cause therefor.

Seventh—Other than lawfully authorized surety companies, no person shall be eligible to be a bondsman for any defendant on trial in the police court, or on appeal from a judgment therein, except he take an oath that the property specified in the undertaking is in the municipal corporation in which said court is held, and that he is worth the amount specified, exclusive of property exempt from execution, and exclusive of all demands for which he may become liable by reason of the forfeiture of any appeal or bail bond for which he is surety.

District attorney, duty of.

SEC. 4423*c*. The district attorney, either in person or by his assistants, must be present at the sessions of the court and attend to the prosecution of all cases coming before it, and make out all complaints and warrants for the arrest of persons charged with crime to be prosecuted in such court.

Warrant and bond clerk and assistants, duties of.

SEC. 4423*d*. The district attorney shall appoint a warrant and bond clerk, who shall receive a salary of twenty-four hundred dollars a year, and three assistant warrant and bond clerks, each of whom shall receive a salary of fifteen hundred dollars a year. No person shall be appointed a warrant and bond clerk who is not at the time of his appointment qualified to practice in all the courts of this state. The warrant and bond clerk shall keep his office open continuously night and day for the transaction of business. Shall draw complaints in actions in the police courts, and approve the same with his

written signature; shall have the custody of all bail bonds and appeal bonds taken in the police courts; shall examine the sufficiency of every bail bond and appeal bond taken in the police court, and make a return thereon, within forty-eight hours after such bond shall have come into his possession, in the following form:

"I, ———, warrant and bond clerk, of the (insert name of municipality), have examined the within bond and find it good in law. I have examined the records of the (insert name of city or county, or of city and county), and find the property, its owners, and incumbrances herein described, to be correct according to said records. (Signed, ———, warrant and bond clerk.)"

The warrant and bond clerk shall indorse upon the bond the time when it was issued by him, or when it came into his possession. He may issue bail bonds and appeal bonds, when the liability thereof does not exceed two thousand dollars, and order the discharge from custody of the person for whom the bonds are issued; and he may take cash bail to the extent, in any one case, of one thousand dollars. He must account for and pay to the treasurer all moneys received as bail in the manner that the county clerk is required by law to account for, and pay moneys received as fees. No clerk of the police court shall ever take bail, or order the release of any one charged with an offense.

Same.

SEC. 4423*e*. In the matter of fixing bail and ordering the release of prisoners, the warrant and bond clerk shall be subject to the judges of the police court, and any violation of a valid order of any of said judges shall be a contempt of court.

Removal of, on failure to keep office open.

SEC. 4423*f*. For any failure to keep the office of the warrant and bond clerk open continuously, he shall be immediately removed from office by the district attorney, or by the mayor.

Who may receive bail money.

SEC. 4423*g*. It shall be a misdemeanor for any person, other than a judge of some court in the municipality, or other than said warrant and bond clerk, to receive bail money for defendants, or to order their discharge.

Upon whom service of copies made.

SEC. 4423*h*. All demurrers to complaints, notices of motions, statements and bills of exception on appeal to the supe-

rior court, must be served upon the assistant district attorney, acting in the department of the court in which the case is set for hearing, or heard, or tried.

County clerk ex-officio clerk of police court.

SEC. 4423*i*. The county clerk shall be the clerk of the police court, and he must be present either in person, or by deputy, at all sessions of the court in the departments thereof; call the daily calendar of the departments, and keep full and complete records of all cases in the court, and the disposition made thereof by the court.

Stenographers of police court.

SEC. 4423*j*. The police judges may appoint not more than two competent stenographers, who shall attend the sessions of the court and take notes of all preliminary examinations made at the sessions, and transcribe into typewritten longhand all evidence taken by either of them where the parties charged have been held for trial, and deliver one copy of the same to the clerk and one copy to the district attorney. Each of such stenographers shall be paid for all his services, including transcription and all stationery used by him, an annual salary of twenty-four hundred dollars.

Justice of the peace may act as police judge.

SEC. 4423*k*. The mayor may in writing appoint any justice of the peace to act as judge of the police court, or any department thereof, during the temporary absence or inability of the judge to act.

Chief of police, duty of.

SEC. 4423*l*. The chief of police shall cause to be made out and deliver to each of the clerks of the court at or before nine o'clock in the forenoon of each day a calendar of arrests in which the cases shall have been assigned to the departments of the court in accordance with the rules and regulations established by the police judges. The calendar shall state "the offense charged"; whether the defendant is "in custody" or "on bail"; "the amount of bail"; "whether cash or bond," and "the name of the arresting officer."

Police officers to attend court.

SEC. 4423*m*. The chief of police shall appoint one or more police officers to attend the sessions of the police court in each department thereof to preserve order and execute the orders of the court.

Rules and regulations.

SEC. 4423*n*. The police judges shall adopt all necessary rules and regulations for conducting the business of the court.

Attorney, qualifications for appearance.

SEC. 4423*o*. No attorney shall appear in said court to prosecute or defend persons charged with offenses unless at the time of his appearance he be qualified to practice law in all the courts of this state.

Term of judges.

SEC. 4423*p*. The term of office of the police judges elected at the general election held in the year eighteen hundred and ninety-eight shall terminate at the hour of noon on the first Monday after the first day of January in the year nineteen hundred, and they shall at said time be succeeded by the police judges provided for in this chapter; and all proceedings pending in said court shall be transferred to the police court provided for in this chapter, and the judges elected as herein provided shall have and obtain jurisdiction of the same.

In municipal corporations of the second class.

SEC. 4424. The judicial power of every municipal corporation of the second class shall be vested in a police court, to be held therein by the city justices, or one of them, to be designated by the mayor, but either of said city justices may hold such court without such designation, and it is hereby made the duty of said city justices, in addition to the duties now required of them by law, to hold said police court. Such justices must be electors of the city, and qualified to practice in all the courts of this state, at the time of their election.

Jurisdiction.

SEC. 4424*a*. The police court shall have exclusive jurisdiction of the following public offenses committed in the city.

1. Petit larceny;

2. Assault or battery, not charged to have been committed upon a public officer in the discharge of official duty, or with intent to kill;

3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine or by imprisonment, or by both such fine and imprisonment;

4. Of proceedings respecting vagrants, lewd or disorderly persons;

5. Of all proceedings for violation of any ordinance of said city, both civil and criminal; of any and all suits to recover

taxes, general or special, levied in such city for city purposes, and of all suits to recover any assessment levied in such city for the improvement of streets, avenues, levees, sidewalks and public squares, and for the opening or laying out of the same, when the amount of said tax or assessment sought to be collected against the person, firm, or corporation assessed is less than three hundred dollars; *provided*, no lien upon the property taxed or assessed for the non-payment of the taxes or assessment is sought to be foreclosed by said suit;

6. Of an action for the collection of money due to such city or from the city to any person, firm, or corporation, when the amounts ought to be collected is less than three hundred dollars;

7. Of an action for the breach or violation of any official bond given by any city officer, and for the breach of any contract, and any action for damages in which the city is a party, or is in any way interested, and on all forfeited recognizances given to or for the benefit or in behalf of such city, and upon all bonds given upon any appeal taken from the judgment of said court in any action above named, when the amount claimed, exclusive of costs, is less than three hundred dollars;

8. Of an action for the recovery of personal property belonging to the city, when the value of the property, exclusive of the damages for the taking or detention, is less than three hundred dollars.

9. Of an action for the collection of any license required by any ordinance of the city.

Powers and disabilities of justices.

SEC. 4424*b*. The judge of said court shall also have power to hear cases for examination, and may commit and hold the offender to bail for trial in the proper court, and may try, condemn, or acquit, and carry his judgment into execution, as the case may require, according to law, and punish persons guilty of contempt of court; and shall have power to issue warrants of arrest in case of a criminal prosecution for a violation of a municipal ordinance, as well as in case of the violation of the criminal law of the state; also all subpœnas and all other processes necessary to the full and proper exercise of his powers and jurisdiction, and in such of the cases enumerated in this section in which trials by jury is not secured by the constitution of the state, he may proceed to judgment in the first instance without a jury, but on appeal the defendants shall be entitled to trial by jury in the superior court. No justice shall sit in cases in which he is a party or a

witness, or in which he is interested, or where he is related to either party by consanguinity or affinity within the third degree, and in case of the sickness or disability or temporary absence from the city of the city justices, the police judge or judge of the police court may by written request call in a justice of the peace residing in the same county to act in his place and stead, and while so acting, he shall be vested with all the powers of the judge for whom he so holds court, in which case proper entry of the proceedings shall be made in the docket of the judge for whom he so holds court, and such entries subscribed by the attending justice shall have the same force and effect as any other record of such court.

Clerks of police courts.

SEC. 4424*c*. The police courts shall have a clerk for each of the judges of said courts, who shall be appointed by the judge of said court presiding in the department thereof in which the said clerk is to act, who shall hold office during the pleasure of said judge. Each of the said clerks shall receive an annual salary of twelve hundred dollars a year, payable monthly out of the treasury of said municipality, which salary shall be full compensation for all services rendered by him. Each of said clerks shall keep a record of the proceedings of, and issue all process ordered by the city justices, or either of them, or by said police court, and receive and pay weekly into the city treasury all fines imposed by said court. They shall also each month render to the council, or other legislative body of said municipality, an exact and detailed account, upon oath, of all fines imposed and collected, and all fines imposed and uncollected, since their last reports. They shall prepare bonds, justify bail, when the amount has been fixed by either of the city justices or said court, in cases not exceeding one hundred dollars, and may administer and certify oaths. The clerks shall remain at the courtrooms of said court during business hours, and during such reasonable times thereafter as may be necessary for discharging their duties. Before receiving their salaries, each or any month, they shall each make and file with the city auditor an affidavit that he has deposited with the city treasurer all moneys that have come to his hands belonging to the city. Any violation of this provision shall be a misdemeanor. Each of said clerks shall give a bond in the sum of five thousand dollars, with good and sufficient sureties, to be approved by the mayor, conditioned for the faithful discharge of the duties of his office.

Disposition of moneys.

SEC. 4424*d*. All fines and other moneys collected on behalf of the city in the police court shall be paid into the city treasury on the first Tuesday of each month; and all bills for fees and costs due the officers of said court shall be reported to the council, or other legislative body, each month.

Dockets.

SEC. 4424*e*. The council, or other legislative body, shall furnish suitable rooms for the holding of said court, and shall also furnish the necessary dockets and blanks. One docket shall be styled "The city criminal docket," in which all the criminal business shall be recorded, and each case shall be alphabetically indexed; another docket shall be styled "The city civil docket," and it shall contain each and every civil case in which the city is a party, or which is prosecuted or defended for her interest, and each case shall be properly indexed. A third docket shall contain all the other business appertaining to the office of said city justice, and in all cases the docket shall contain all such entries as are required by law to be made in justices' dockets; and in any case tried before the court the docket must show what duties were performed by any officer of the court, and the amount of the fees due to the officer for such services, and what amount of money, if any, collected.

Court, when open.

SEC. 4424*f*. The police court shall be always open, except upon non-judicial days, and then for such purposes only as by law permitted or required of other courts of this state.

Appeals. Who to conduct cases.

SEC. 4424*g*. Appeals may be taken from any judgment of said police court to the superior court of the county in which such municipality may be situated, in the same manner in which appeals are taken from justices' courts in like cases. The district attorney of the county in which said municipality is situated shall attend, and conduct all proceedings of the nature of a preliminary examination before said police court; the city attorney of such municipality shall prosecute, conduct, and control all other cases and proceedings in said court, and in the court to which the same may be appealed.

Place of imprisonment.

SEC. 4424*h*. In all cases when the police court is authorized to impose a fine or imprisonment, or both, upon persons convicted in said court of any offense triable therein, the said

court may sentence the offender to be imprisoned in the city jail, if there be one established by the council, or other legislative body; if not, then until said body shall designate and establish a city jail or prison, may sentence offenders to be imprisoned in the county jail, and in addition to imprisonment, may sentence offenders to be employed to labor in the city, under the direction of the chief of police, and in the manner prescribed by ordinance, for the benefit of the city, during such time of imprisonment, and may, in case of imposing a fine, embrace as a part of the sentence that, in default of the payment of such fine, the defendant shall be imprisoned and required to labor for the benefit of the city, as before provided, at the rate of two dollars a day, till such fine is satisfied. Offenders required to labor under the direction of the chief of police shall, until the establishment of a city jail, be returned to the county jail at the end of each day's labor during their term of imprisonment, until a city jail shall be established. It is hereby made the duty of the officer having the control or charge of the county jail of the county wherein such city is situated to receive and safely keep all persons imprisoned by any judgment or order of the police court, in accordance with the order of commitment, and to allow those to be removed from jail, under the charge of the chief of police, who are required to labor for the benefit of the city, or whom the police judge may order brought forth for trial, and the keeper of the jail shall in no way be responsible for the safe-keeping of such prisoners while so under the charge of the chief of police.

Seal, and transcripts.

SEC. 4424*i*. The court shall have a seal, to be provided by the city, and certified transcripts of the dockets made by the clerk of said court, under the seal of said court, shall be evidence in any court of the state of the contents of said docket; and all warrants, and other process, issued out of said court, and all acts done by said court and certified under its seal, shall have the same force and validity, in any part of this state, as though issued or done by any court of record of this state.

Monthly report.

SEC. 4424*j*. The city justices and police judge shall, on the first Tuesday of each month, make to the council, or other legislative body of said municipality, a full and complete report of all the cases, civil and criminal, in which the city has an interest, or which are required to be entered in the city civil

docket, or the city criminal docket; such report to be made upon blanks to be furnished by the council, or other legislative body, and in such form as they may require.

In municipal corporations of the third and fourth classes.

SEC. 4425. The judicial power of municipal corporations of the third and fourth classes shall be vested in a police court, to be held by the police judge of such municipality. Said police court shall have jurisdiction, concurrently with the justices' courts, of all criminal actions and proceedings arising within the corporate limits of such municipality, and which might be tried in such justices' courts; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any municipal ordinance; of all actions founded upon any obligation or liability created by any such ordinance, and of all prosecutions for any violation of any such ordinance. The rules of practice and mode of proceeding in said police court shall be the same as are or may be prescribed by law for justices' courts in like cases; and appeals may be taken to the superior court of the county in which such city may be situated from all judgments of said police court, in like manner and with like effect as in cases of appeals from justices' courts. Said court shall be a court of record.

Police judge.

SEC. 4425*a*. The police judge shall be judge of the police court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments.

When disqualified.

SEC. 4425*b*. In all cases in which the police judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree, or is otherwise disqualified, or in case of his sickness or inability to act, the mayor may call in a justice of the peace residing in the city to act in the place and stead of the police judge; or if there be no justice of the peace residing in the city, or if all those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city may be situated.

Clerk of court.

SEC. 4425*c*. The council, or other legislative body, shall appoint, upon the nomination of the mayor, a clerk for said

police court. Said clerk shall keep the records of said court and the seal thereof, and perform such other duties as may be required of him by law or ordinance. He shall receive a salary of one hundred dollars per month. The council shall also provide a seal for said police court.

Offenses not triable in said courts, how conducted.

SEC. 4426. Proceedings in the police court in criminal actions for offenses not triable in such courts must be had in conformity with the provisions of Part II, Title III, Chapter VII, of the Penal Code.

Offenses triable in said courts, how conducted.

SEC. 4427. Proceedings in the police courts in criminal actions triable in such courts are regulated in Part II, Title XI, Chapter I, of the Penal Code.

Civil actions, how conducted.

SEC. 4428. Proceedings in the police courts in civil actions are regulated by Part II, Title XII, of the Code of Civil Procedure.

In municipal corporations of the fifth and sixth classes.

SEC. 4429. The judicial powers of municipal corporations of the fifth and sixth classes, unless otherwise specially provided, are vested in recorders' courts, which have the powers and jurisdiction and are established, governed, and regulated in conformity with the provisions of Part IV, Title III, Chapters VI and VII, sections 4437, *et seq.*

COMMISSIONERS' NOTE: This section is new.

CHAPTER IV.

STREETS AND SEWERS.

ARTICLE I. STREET WORK.
II. SEWER WORK.
III. CHANGE OF GRADE OF STREETS.
IV. OPENING, CLOSING, AND WIDENING STREETS.
V. SHADE TREES AND HEDGES UPON STREETS.
VI. STREET IMPROVEMENT BONDS.

ARTICLE I.

STREET WORK.

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4430*x*. Power of council not stayed by objection.
4430*y*. Street contingent fund and its application.
4430*z*. Cost of street work may be paid out of treasury.

COMMISSIONERS' NOTE: Articles I, II, and III of this chapter are drawn from the so-called Vrooman act, being the act of March 18, 1885 (Stats. 1885, 147), and the amendments of said act. Article IV was the act of March 6, 1889 (Stats. 1889, 70). Article V was the act of March 11, 1893 (Stats. 1893, 153), and Article VI was the act of February 27, 1893 (Stats. 1893, 33).

Definitions.

SEC. 4430. Unless otherwise expressly provided, the words, terms, and phrases herein mentioned, and used in this chapter shall be construed as in this section defined, viz.:

First—The words "work," "street work," "improve," "improved," and "improvement," include all work mentioned in this chapter, and also the construction, reconstruction, maintenance, alteration, and repairs of all or any portion of said work, including the laying, relaying, maintaining, repairing, altering, or removing of any water, sewer, gas, or other pipes or conduits, for any purpose whatever, and the planting, replanting, caring for, trimming or removing shade or ornamental trees along or upon the streets or the sidewalks thereof.

Second—The term "incidental expenses" includes the compensation of the city engineer for work done by him; also, the cost of printing and advertising as provided in this chapter, and not otherwise; also, the compensation of the person appointed by the superintendent of streets to take charge of and to superintend any of the work mentioned in section 4431*i*. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Third—The word "municipality" and the word "city" shall

be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

Fourth—The words "paved" or "repaved" shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood, or other material, whether patented or not, which the city council or other legislative body shall by ordinance adopt.

Fifth—The word "streets" shall be deemed to, and is hereby declared to include streets, roads, avenues, highways, lanes, alleys, crossings or intersections, court squares, places, and public passage-ways, within or under the jurisdiction or control of any municipal corporation; also all sidewalks, crosswalks, bicycle and foot paths, culverts, gutters, or curbs, along, upon, or across the same; and the term "main street" means such actually opened street or streets as bound a block; the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Sixth—The terms "street superintendent" and "superintendent of streets" are hereby declared to include any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof, in any municipal corporation. In all those streets where there is no street superintendent or superintendent of streets, the council or other legislative body thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person appointed.

Seventh—The term "city council," or "council or other legislative body," is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

Eighth—In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this chapter shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

Ninth—The term "clerk" and "city clerk" is hereby declared to include any person or officer who shall be clerk of the council, or other legislative body of such municipality; and the term "treasurer" and "city treasurer" shall include

any person who is the custodian of the funds of the municipality.

Tenth—The term "quarter-block," as to irregular blocks, shall include all lots or portions of lots having any frontage on either intersecting street, half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

Eleventh—The term "one year" shall include the time beginning with January first and ending with the thirty-first day of December of the same year.

COMMISSIONERS' NOTE: The above definitions were originally included in section 34 of the act from which this chapter is drawn (Stats. 1885, 147). Subdivisions 1 and 4 of said section will be found incorporated herein as sections 4431*g* and 4431*h*, respectively. Subdivision 14 is omitted, as no longer applicable.

Public streets.

SEC. 4430*a*. All streets in the municipalities of this state now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets for the purposes of this chapter, and the council or other legislative body of each municipality is hereby empowered to establish and change the grades of said streets, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section 4430*b*, under the proceedings hereinafter described, or any other street work, as defined in section 4430.

Council may order street work.

SEC. 4430*b*. Whenever the public interest or convenience may require, the council or other legislative body of any municipality is hereby authorized and empowered to order the whole or any portion, either in length or width, of the streets of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, sewered or resewered, and to order sidewalks, manholes, culverts, cesspools, gutters, tunnels, curbing, and crosswalks to be constructed therein, or to order breakwaters, levees, or walls of rock, or other material, to protect the same from overflow or injury, and to order any other work to be done which shall be necessary to complete the whole or any portion of said streets, and it may order any of the said work to be improved; and also to order a sewer or sewers, with outlets, for draining or sanitary purposes, in, over, or through any

right of way granted or obtained for such purpose; *provided*, that whenever the grade of a street shall hereafter be changed, the petition of the owners of a majority of the feet fronting thereon, asking for grading the same to the new grade, shall be a condition precedent to the ordering of such grading to be done.

Procedure for doing street work.

SEC. 4430*c*. Before ordering any work done or improvement made which is authorized by section 4430*b*, the council or other legislative body shall pass a resolution of intention so to do, and describing the work, which shall be posted conspicuously for two days on or near the chamber door of said body, and published by two insertions in one or more daily, semi-weekly, or weekly newspapers published and circulated in said city, and designated by said council for that purpose. The street superintendent shall thereupon cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than one hundred feet in distance apart, but not less than three in all, or when the work to be done is only upon an entire crossing or any part thereof, in front of each quarter block and irregular block liable to be assessed, notice of the passage of said resolution. Said notice shall be headed "Notice of street work," in letters of not less than one inch in length, and shall, in legible characters, state the fact of the passage of the resolution, its date, and briefly the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice, similar in substance, to be published for six days in one or more daily newspapers published and circulated in said city, and designated by said city council, or in cities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated, and designated. In case there is no such paper published in said city, said notice shall be posted for six days on or near the chamber door of said council or other legislative body, and in two other conspicuous places in said city, as hereinafter provided. The owners of a majority of the frontage of the property fronting on said proposed way or improvement, where the same is for one block or more, may make a written objection to the same within ten days after the expiration of the time of the publication and posting of said notice, which objection shall be delivered to the clerk of the council, or other legislative body, who shall indorse thereon the date of its reception by him, and such objections so deliv-

ered and indorsed shall be a bar for six months to any further proceedings in relation to the doing of said work, or making said improvements, unless the owners of the one half or more of the frontage, as aforesaid, shall meanwhile petition for the same to be done. At any time before the issuance of the assessment roll, all owners of lots or lands liable to assessment therein who after the first publication of said resolution of intention may feel aggrieved, or who may have objections to any of the subsequent proceedings of said council, or other legislative body, in relation to the performance of the work mentioned in said notice of intention, shall file with the clerk a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object; such petition or remonstrance shall be passed upon by the said legislative body, and its decision therein shall be final and conclusive. But when the work or improvement proposed to be done is the construction of sewers, manholes, culverts or cesspools, crosswalks, or sidewalks, and curbs, and the objection thereto is signed by the owners of a majority of frontage liable to be assessed for the expense of said work, as aforesaid, the said legislative body shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the post office of said city, postage prepaid, addressed to each objector, or his agent, when he appears for such objector. At the time specified said council or other legislative body shall hear the objections urged, and pass upon the same, and its decisions shall be final and conclusive, and the said bar for six months to any further proceedings shall not be applicable thereto. And when not more than two blocks, including street crossings, remain ungraded to the official grade, or otherwise unimproved, in whole or in part, and a block or more on each side upon said street has been so graded or otherwise improved, or when not more than two blocks at the end of a street remain so ungraded or otherwise unimproved, said council, or other legislative body, may order any of the work mentioned in this chapter to be done upon said intervening ungraded or unimproved part of said street, or at the end of a street, and said work upon said intervening part, or at the end of a street, shall not be stayed or prevented by any written or other objection unless such legislative body shall deem proper. And if one half or more in width or in length, or as to grading, one half or more of the grading work, of any street lying and being between

two successive main street crossings, or if a crossing has been already partially graded or improved as aforesaid, said legislative body may order the remainder improved, graded or otherwise, notwithstanding such objections of property owners. At the expiration of twenty days after the expiration of the time of said publication by said street superintendent, and at the expiration of twenty-five days after the advertising and posting, as aforesaid, of any resolution of intention, if no written objection to the work therein described has been delivered, as aforesaid, by the owners of a major frontage of the property fronting on said proposed work or improvement, or if any written objection purporting to be signed by the owners of a major frontage is disallowed by said council, as not of itself barring said work for six months, because, in its judgment, said objection has not been legally signed by the owners of a majority of said frontage, the council or other legislative body shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvement to be made, which is authorized by this chapter; which order, when made, shall be published for two days the same as provided for the publication of the resolution of intention. Before passing any resolution for the construction of said improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said legislative body if required by it, by the city engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him. Whenever the contemplated work of improvement in the opinion of said legislative body is of more than local or ordinary benefit, or whenever, according to estimate to be furnished by the city engineer, the total estimated costs and expenses thereof would exceed one half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the council or other legislative body may make the expense of such work or improvement chargeable upon a district, which the said body shall, in its resolution of intention, declare to be the district benefited by said work or improvement, and to be assessed to pay the costs and expenses thereof. Objections to the extent of the district lands to be affected or benefited by said work or improvement, and to be assessed to pay the costs and expenses

thereof, may be made by interested parties, in writing, within ten days after the expiration of the time of the publication of the notice of the passage of the resolution of intention. The city clerk shall lay said objections before the legislative body, which shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections by depositing a notice thereof in the post office of said city, postage prepaid, addressed to each objector. At the time specified the council or other legislative body shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If the objections are sustained, all proceedings shall be stopped; but proceedings may be immediately again commenced by giving the notice of intention to do the said work or make said improvements. If the objections are overruled by the city council, the proceedings shall continue the same as if such objections had not been made.

Owners may petition for street work.

SEC. 4430*d*. The owners of a majority in frontage of lots and lands fronting on any street, avenue, lane, alley, place, or court, or of lots or lands liable to be assessed for the expense of the work petitioned to be done, or their duly authorized agents, may petition the council or other legislative body to order any of the work mentioned in this chapter to be done, and the said legislative body may order the work mentioned in said petition to be done, after notice of its intention so to do has been posted and published as provided in section 4430*c*.

Sealed bids for street work.

SEC. 4430*e*. Before the awarding of any contract by the council or other legislative body for doing any street work, said body shall cause notice, with specifications, to be posted conspicuously for five days, on or near its chamber door, inviting sealed proposals or bids for doing the work ordered, and shall also cause notice of said work inviting said proposal, and referring to the specifications posted or on file, to be published for two days in a daily, semi-weekly, or weekly newspaper published and circulated in said city, designated by said legislative body for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. All proposals or bids offered shall be accompanied by a check payable to the order of the mayor or other chief executive officer of the city, certified by a responsible bank, for an amount which shall not be less than ten

per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and by two sureties, who shall justify before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the city, and said council or other legislative body shall, in open session, examine, and publicly declare the same; *provided, however*, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to said legislative body. Said body may reject any and all proposals or bids, should it deem this for the public good, and also the bid of any party who has been delinquent and unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid, which award shall be approved by the mayor or other chief executive officer, or a three fourths vote of the council or other legislative body. If not approved by him, or a three fourths vote of said body without further proceedings, the said body may readvertise for proposals or bids for the performance of the work as in the first instance, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bid so rejected. But the checks accompanying such accepted proposals or bids shall be held by the clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into its funds for repairs of streets, and any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund. Notice of such awards of contracts shall be posted for five days, in the same manner as hereinbefore provided for the posting of proposals of said work, and shall be published for two days in a daily newspaper published and circulated in said city, and designated by said city council, or in cities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper

so published, circulated, and designated; *provided, however,* that in case there is no newspaper printed or published in any such city, then such notice of award shall only be kept posted as hereinbefore provided. The owners of three fourths of the frontage of lots and lands upon the streets whereon said work is to be done, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within ten days after the first posting and publication of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the first posting and publishing of said award, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. But if such original bidder neglects, fails, or refuses, for fifteen days after the first posting and publication of the notice of award, to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for the said work to the then lowest regular bidder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. If the owner or contractor, who may have taken any contract, do not complete the same within the time limited in the contract, or within such further time as the council or other legislative body may give them, the superintendent of streets shall report such delinquency to said body, which may relet the unfinished portion of said work, after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance. All contractors, contracting owners included, shall at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties and payable to such city, in such sums as the mayor, or other chief executive officer, shall deem adequate, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over

and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, for payment by him, the cost of publication of the notices, resolutions, orders, or other incidental expenses and matters required under the proceedings prescribed in this chapter, and such other notices as may be deemed requisite by the council, or other legislative body. And in case the work is abandoned by the city before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury.

Street superintendent to make contracts.

SEC. 4430*f*. The superintendent of streets is hereby authorized, in his official capacity, to make all written contracts, and receive all bonds authorized by this chapter, and to do any other act, either expressed or implied, that pertains to the street department under this chapter; and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time, under the direction of the council or other legislative body. The work provided for in section 4430*a* must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets, and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets, and all contracts made therefor must contain a provision to that effect, and also express notice that, in no case, except where it is otherwise provided in this chapter, will the city, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The council or other legislative body may, by ordinance, prescribe general rules directing the superintendent of streets and the contractor as to the materials to be used, and the mode of executing the work, under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets in the mode herein provided.

Expense of street work, how assessed.

SEC. 4430*g*. The expenses incurred for any work authorized by this chapter (which expense shall not include the cost of

any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor any work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed as follows:

1. Upon the lots and lands fronting thereon, except as hereinafter specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of work.

2. The expense of all improvements, except such as are done by contractors under the provisions of section 4430*n*, until the streets, avenues, street crossings, lanes, alleys, places, or courts are finally accepted, as provided in section 4430*w*, shall be assessed upon the lots and lands, as provided in this section, according to the nature and character of the work; and after such acceptance the expense of all the work thereafter done thereon shall be paid by said city out of the street department fund.

3. The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

4. Where a main street terminates in another main street, the expenses of the work done on one half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main streets, and the expense of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

5. Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street, if it does not meet another.

6. The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions,

half way to the next street, place, or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

7. Where a subdivision street, avenue, lane, alley, place, or court, terminates in another street, avenue, lane, alley, place, or court, the expense of the work done on one half of the width of the subdivision street, avenue, lane, alley, place, or court, opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, or avenue, lane, alley, place, or court, so terminating, according to its frontage thereon, half way on each side, respectively, to the next street, avenue, lane, alley, court, or place, or to the end of such street, avenue, lane, alley, place, or court, if it does not meet another, and the other one half of the width upon the lots fronting such termination.

8. Where any work mentioned in this act (manholes, cesspools, culverts, crosswalks, piling, and capping excepted) is done on either or both sides of the center line of any street for one block or less, and further work opposite to the work of the same class already done is ordered to be done to complete the unimproved portion of said street, the assessment to cover the total expenses of said work so ordered shall be made upon the lots or portions of the lots only fronting the portions of the work so ordered. And when sewering or resewering is ordered to be done under the sidewalk on only one side of a street for any length thereof, the assessment for its expenses shall be made only upon the lots and lands fronting nearest upon that side, and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

9. Section one of chapter three hundred and twenty-five of the laws of this state, entitled "An act amendatory of and supplementary to 'An act to provide revenue for the support of the government of this state,' approved April twenty-ninth, eighteen hundred and fifty-seven," approved April nineteenth, eighteen hundred and fifty-nine, shall not be applicable to the provisions of this section; but the property herein mentioned shall be subject to the provisions of this section and be assessed for work done under the provisions of this section.

10. It shall be lawful for the owner or owners of lots or lands fronting upon any streets, the width and grade of which have been established by the council or other legislative body, to perform, at his or her own expense (after obtaining permission from said body so to do, but before said body has passed its resolution of intention to order grading inclusive of this), any

grading upon said street to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the superintendent of streets, which certificate the superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the council or other legislative body orders the grading of said street, or any portion thereof, on which any grading, certified as aforesaid, has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners, and his or their successors in interest, shall be entitled to credit, on its assessment upon his or their lots and lands fronting on said streets for the grading thereof, to the amount of the cubic yard of cutting and filling set forth in his or their said certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; *provided*, *however*, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots or lands owned by him or them, and proportionately assessed for the whole of said grading; and the superintendent of streets shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for a grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; *provided*, *however*, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do, any work (except grading) on such street, in front of any block, at

his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done, as provided in subdivision 11 of this section of this chapter; *provided*, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the street superintendent at the time said order is passed.

11. The council or other legislative body may include in one resolution of intention and order any of the different kinds of work mentioned in this chapter, and it may except therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said excepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made; *provided*, that this shall not be construed so as to affect the special provisions as to grading contained in subdivision 10 of this section.

12. Whenever the resolution of intention declares that the costs and expenses of the work and improvement are to be assessed upon a district, the council or other legislative body shall direct the city engineer to make a diagram of the property affected or benefited by the proposed work or improvement, as described in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece, or parcel of land, the area in square feet of each of such lots, pieces, or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the council or other legislative body, the clerk shall, at the time of such approval, certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent of streets, or legislative body, on appeal, proceed to estimate upon the lands, lots or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece, or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such proposed work, and in so doing shall assess

said total sum upon the several pieces, parcels, lots, or portions of lots, and subdivisions of land in said district benefited thereby, to wit: Upon each respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in the next section, and the provisions of subdivisions 3, 4, 5, 6, 7, and 8 of this section shall not be applicable to the work or improvement provided for in this subdivision.

Street superintendent to make assessment.

SEC. 4430*h*. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent of said city, or the council or other legislative body, on appeal, the street superintendent shall make an assessment to cover the sum due for the work performed and specified in said contract (including any incidental expenses), in conformity with the provisions of the preceding section, according to the character of the work done; or, if any direction and decision be given by said council or other legislative body, on appeal, then in conformity with such direction and decision, which assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the owner of each lot, or portion of a lot (if known to the street superintendent), if unknown the word "unknown" shall be written opposite the number of the lot, and the amount assessed thereon, the number of each lot or portion or portions of a lot assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place, or court, on which any work has been done, and showing the relative location of each district, lot, or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting, or number of lots assessed, for said work contracted for and performed.

Form of warrants.

SEC. 4430*i*. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, and countersigned by the mayor or other chief executive officer of said municipality; the said warrant shall be substantially in the following form:

By virtue hereof, I (name of the superintendent of streets), of the city of ———, county of ——— (or city and county of ———), and the state of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor), (his or their) agents or assigns, to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be (his or their) warrant for the same.

(Date.)

———, (name of superintendent of streets.)

Countersigned by (name of mayor, or other chief executive officer).

Said warrant, assessment, and diagram, together with the certificate of the city engineer, shall be recorded in the office of said superintendent of streets. When so recorded, the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment, diagram, and certificate, all persons mentioned in section 4430*k* of this chapter shall be deemed to have notice of the contents of the record thereof. After said warrant, assessment, diagram, and certificate are recorded, the same shall be delivered to the contractor, or his agent or assigns, on demand, but not until the payment to the said superintendent of streets of the incidental expenses not previously paid by the contractor, or his agents or assigns; and by virtue of said warrant said contractor, or his agent or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. Whenever it shall appear by any final judgment of any court of this state that any suit brought to foreclose the lien of any sum of money assessed to cover the expense of said street work done under the provisions of this act has been defeated by reason of any defect, error, informality, omission, irregularity, or illegality of any assessment hereafter to be made and issued, or in the recording or in the return thereof made to or recorded by said superintendent of streets, any person interested therein may, at any time within three months after the entry of said final judgment, apply to said superintendent of streets who issued the same, or to any superintendent of streets in office at the time of said application, for another assessment to be issued in conformity to law; and said superintendent shall, within fifteen

days after the date of said application, make and deliver to said applicant a new assessment, diagram, and warrant in accordance with law; and the acting mayor, or other chief executive officer, shall countersign the same as now provided by law, which assessment shall be a lien for the period of two years from the date of said assessment, and be enforced as provided in section 4430*g* of this act.

Payment to be demanded.

SEC. 4430*j*. The contractor, or his assigns, or some person in his or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the person so assessed, or their agents, can not conveniently be found, or whenever the name of the owner of the lot is stated as "unknown" on the assessment, then the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment on the premises assessed. The warrant shall be returned to the superintendent of streets within thirty days after its date, with a return indorsed thereon, signed by the contractor, or his assigns, or some person in his or their behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the superintendent of streets shall record the return so made, in the margin of the record of the warrant and assessment, and also the original contract referred to therein, if it has not already been recorded at full length in a book to be kept for that purpose in his office, and shall sign the record. The said superintendent of streets is authorized at any time to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; *provided*, that no such payment so made after suit has been commenced, without the consent of the plaintiff in action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff; and he may release any assessment upon the books of his office, on the payment to him of the amount of the assessment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom the assessment and warrant were issued; and if any contractor shall fail to return his warrant within

the time and in the form provided in this section, he shall thenceforth have no lien upon the property assessed; *provided, however*, that in case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid.

Owners may object to assessment.

SEC. 4430*k*. The owners, whether named in the assessment or not, the contractor, or his assigns, and all other persons directly interested in any work provided for in this chapter, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the superintendent of streets, shall, within thirty days after the date of the warrant, appeal to the council or other legislative body of the city, as provided in this section, by briefly stating their objections in writing, and filing the same with the clerk of said city. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations, or proceedings objected to, or complained of, shall be published for five days. Upon such appeal the said council or other legislative body may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the superintendent of streets relative to said work; may confirm, amend, set aside, alter, modify, or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to its directions, and may instruct and direct the superintendent of streets to correct the warrant, assessment, or diagram in any particular, or to make and issue a new warrant, assessment, and diagram to conform to its decisions in relation thereto, at its option. All the decisions and determinations of said council or other legislative body upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities and irregularities which said city council might have remedied and avoided; and no assessment shall be held invalid, except upon appeal to said council or other legislative body, as provided in

this section, for any error, informality, or other defect in any of the proceedings prior to the assessment, or in the assessment itself, where notice of the intention of the council or other legislative body to order the work to be done, for which the assessment is made, has been actually published in any designated newspaper of said city for the length of time prescribed by law, before the passage of the resolution ordering the work to be done.

Contractor may sue, when.

SEC. 4430*l*. At any time after the period of thirty-five days from the day of the date of the warrants, as herein provided, or if an appeal is taken to the council or other legislative body, as provided in section 4430*k*, at any time after five days from the decision of said council, or after the return of the warrant or assessment, after the same may have been corrected, altered or modified, as provided in said section 4430*k* (but not less than thirty-five days from the date of the warrant), the contractor or his assignee may sue, in his own name, the owner of the land, lots, or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this chapter, the plaintiff shall recover the sum of fifteen dollars, in addition to the taxable cost, as attorney's fees, but not any percentage upon said recovery. And when suit has been brought, after a personal demand has been made and a refusal to pay such assessment so demanded, the plaintiff shall also be entitled to have and recover said sum of fifteen dollars as attorney's fees, in addition to all taxable costs, notwithstanding that the suit may be settled, or a tender may be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the superior court within whose jurisdiction the city is, in which said work has been done, and in case any of the assessments are made against lots, portions of lots, or lands, the owners thereof cannot, with due diligence, be found, the service in each of such actions may be had in such manner as is prescribed in the laws of this state. The said warrant, assessment, certificate, and diagram, with the affidavit of demand and non-payment, shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets

and council or other legislative body upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The court in which suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said courts; and on appeal, the appellate courts shall be vested with the same power to judge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending, or hereafter brought to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this chapter and the law of this state. This chapter shall be liberally construed to effect the ends of justice.

Partial assessment may be made.

SEC. 4430*m*. The council or other legislative body, instead of waiting until the completion of the improvement, may, in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as provided in sections 4430*h*, 4430*i*, 4430*j*, 4430*k*, and 4430*l*.

Street repairs, duty of superintendent.

SEC. 4430*n*. When any portion of any street, avenue, lane, alley, court, or place in said city improved, or any sidewalk constructed thereon shall be out of repair, or needing reconstruction, and in condition to endanger persons or property passing thereon, or in condition to interfere with the public convenience in the use thereof, it shall be the duty of said superintendent of streets to require, by notice in writing, to be delivered to them or their agents personally, or left on the premises of the owners or occupants of lots or portions of lots fronting on said portion of said street, avenue, alley, lane, court or place, or of said portion of said sidewalk so out of repair or needing reconstruction as aforesaid, to repair or reconstruct, or to do both, forthwith, said portion of said street, avenue, lane, alley, court, or place, to the center line of said street in front of the property of which he is the owner, or tenant, or occupant, and said superintendent of streets shall particularly specify in said notice what work is required to be

done, and how the same is to be done, and what material shall be used in said repairs, or reconstructions, or both. If said repairs or constructions, or both, be not commenced within three days after notice given as aforesaid, and diligently and without interruption prosecuted to completion, the said superintendent of streets may, under authority from said council or other legislative body of the city, make such repairs, reconstructions, or both, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specification for the doing of said work shall have been conspicuously posted by him in his office for two days, inviting bids for the doing of said work, which bids shall be delivered to him at his office on or before the second day of said posting, and opened by him on the next day following the expiration of said two days of posting, and the contract by him be awarded to the lowest bidder, if such lowest bid, in the judgment of said street superintendent, shall be reasonable. All of said bids shall be preserved in his office and open at all times after the letting of the contract to the inspection of all persons, and such owner, tenant, or occupant shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of said street superintendent. Upon the completion of said repairs, or reconstruction, or both, by said contractor as aforesaid, to the satisfaction of said superintendent of streets, said superintendent of streets shall make and deliver to said contractor a certificate to the effect that such repairs, or reconstruction, or both, have been properly made by said contractor to the grade, and that the charges for same are reasonable and just, and that he, said superintendent, has accepted the same.

Lien for cost of repairs.

SEC. 4430*o*. If the expenses of the work and material for such improvement, after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant for the amount contracted to be paid; and said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said superintendent of streets in a book kept by him in his

office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in section 4430*i*, and may be enforced in the same manner.

Cumulative remedy.

SEC. 4430*p*. In addition, and as cumulative to the remedies above given, the council or other legislative body shall have power, by resolution or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable or neglecting, or refusing to make repairs when required, as provided in section 4430*n*, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the people of the state of California, in the court having jurisdiction thereof, and may be applied, if deemed expedient by the said legislative body, in the payment of the expenses of any such repairs not otherwise provided for.

"Owner" defined.

SEC. 4430*q*. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office of each county, or the person in possession of lands, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this chapter. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Rights of tenant to pay assessment.

SEC. 4430*r*. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provision of this chapter, or he may pay the price agreed upon to be paid under the provision of section 4430*m*, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him he shall have a lien upon, and may retain possession of the said land and lots until the amount so paid and advanced be satis-

fied, with legal interest, from accruing rents, or by payment by the owner.

Effect of records of street superintendent.

SEC. 4430*s*. The records kept by the superintendent of streets of said city, in conformity with the provisions of this chapter, and signed by him, shall have the same force and effect as other public records, and copies therefrom, duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any citizen wishing to examine them, free of charge.

Service of notices.

SEC. 4430*t*. Notices in writing which are required to be given by the superintendent of streets, under the provisions of this chapter, may be served by any person, with the permission of the superintendent of streets, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets (who for that purpose, and for all other purposes, and in all cases where a verification is required under the provisions of this chapter, is hereby authorized to administer oaths), or other person authorized to administer oaths, or such notices may be delivered to the superintendent of streets himself, who must also verify the service thereof, and who shall keep a record of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person.

City to keep accepted streets in repair.

SEC. 4430*u*. Whenever any street, or portion of a street, has been or shall hereafter be fully constructed to the satisfaction of the superintendent of streets, and of the council or other legislative body, and is in good condition throughout, and a sewer, gas pipes, and water pipes are laid therein, under such regulations as said legislative body shall adopt, the same shall be accepted by said body, by ordinance, and thereafter shall be kept in repair and improved by the said municipalty; the expense thereof, together with the assessment for street work done in front of city property, to be paid out of a fund to be provided by said legislative body for that purpose; *provided*, that said body shall not accept of any portion of the street less than the entire width of the roadway (including the curbing), and one block in length, or one entire crossing; *and provided further*, that said council or other legislative body may partially or conditionally accept any street, or portion of

a street, without a sewer, or gas pipes, or water pipes therein, if the ordinance of acceptance expressly states that the council deems such sewer, or gas pipes, or water pipes, to be then unnecessary, but the lots of land previously, or at any time, assessable for the cost of constructing a sewer, shall remain and be assessable for such cost, and for the cost of repairs and restoration of the street damaged in the said construction whenever said body shall deem a sewer to be necessary, and shall order it to be constructed, the same as if no partial or conditional acceptance had ever been made. The superintendent of streets shall keep in his office a register of all streets accepted by the council or other legislative body under this section, which register shall be indexed for easy reference thereto.

Superintendent to keep office and records.

SEC. 4430*v*. The superintendent of streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this chapter. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the street or sewer fund of said city. He shall also see that the laws, ordinances, orders, and regulations relating to the public streets and highways are fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all the public streets and highways, and also of all public buildings, parks, lots, and grounds of said city, as may be prescribed by the council or other legislative body. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the council or other legislative body; and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect.

City not liable for damages.

SEC. 4430*w*. If, in consequence of any graded street or public highway improved under the provisions of this chapter being out of repair and in condition to endanger persons or property passing thereon, any person, while carefully using said street or public highway, and exercising ordinary care to avoid the danger, suffer damage to his person or property,

through any such defect therein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for the period of twenty-four hours or more after notice thereof to the said superintendent of streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officers through whose official negligence such defects remain unrepaired, shall be jointly and severally liable to the party injured for the damage sustained; *provided*, that said superintendent has the authority to make said repairs, under the direction of the council or other legislative body, at the expense of the city.

Power of council not stayed by objection.

SEC. 4430*x*. The council or other legislative body of such city shall have full power and authority to construct sewers, gutters, and manholes, and provide for the cleaning of the same, and culverts or cesspools, or crosswalks or sidewalks, or any portion of any sidewalk, upon or in any street, avenue, lane, alley, court, or place in such city; and also for drainage purposes, over or through any right of way obtained or granted for such purposes, with necessary and proper outlet or outlets to the same, of such materials, in such a manner, and upon such terms as it may be deemed proper. None of the work or improvements described in this section shall be stayed or prevented by any written or any other remonstrance or objection, unless such legislative body deems proper.

Street contingent fund and its application.

SEC. 4430*y*. The council or other legislative body of the city may, in its discretion, repair and water streets that shall have been graded, curbed, and planked, paved, or macadamized, and may build, repair, and clean sewers, and shall provide a street contingent fund at the same time and in the same manner as other funds are provided, out of which to pay the costs and expenses of making said repairs, and watering said streets, and building, repairing, and cleaning said sewers; but whenever any unaccepted street, or part of a street, requires regrading, recurbing, repiling, repaving, replanking, regraveling, or remacadamizing, or requires new culverts, or new crosswalks, or new sidewalks, or new sewers, the work shall be advertised and let out by contract, and the costs and expenses thereof shall be assessed upon the property affected or benefited thereby, the same as in the first instance.

Cost of street work may be paid out of the treasury.

SEC. 4430*z*. The council or other legislative body of the city may, in its discretion, order, by resolution, the whole or any part of the cost and expenses of any of the work mentioned in this chapter to be paid out of the treasury of the municipality from such fund as said body may designate. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said cost and expenses proportionately upon the lots, parts of lots, and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided.

ARTICLE II.

SEWER WORK.

Section 4431. Cost of sewer may be paid from assessment district or from street contingent fund.
4431*a*. Bonds may be issued for sewer work.
4431*b*. Conditions of sewer bonds.
4431*c*. How sewer bonds sold.
4431*d*. May be sold at not less than par without notice.
4431*e*. Surplus proceeds may be transferred to general fund.
4431*f*. How contracts for sewer work let.
4431*g*. Duties of city engineer.
4431*h*. Notices, how published or posted.
4431*i*. Street superintendent may appoint inspector.
4431*j*. Work commenced under former acts not affected hereby.

Cost of sewer may be paid from assessment district or from street contingent fund.

SEC. 4431. Whenever the council or other legislative body deem it necessary to construct a sewer, then the said body may, in its discretion, determine to construct said sewer, and assess the cost and expenses thereof upon the property to be affected or benefited thereby, in such manner and within such assessment district as it shall prescribe, and the lien therefor upon said property shall be the same as is provided in section 4430*i*, or said legislative body may determine to construct said sewer and pay therefor out of the street contingent fund.

Bonds may be issued for sewer work.

SEC. 4431*a*. If, at any time, the council or other legislative body shall deem it necessary to incur any indebtedness for the construction of sewers, in excess of the money in the street contingent fund applicable to the construction of such sewers,

they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the route and general character of the sewer or sewers to be constructed, and the amount of money necessary to be raised annually by taxation for an interest and sinking fund as hereinafter provided. Such notice shall be published for at least three weeks in some newspaper published in such city, and no other question or matter shall be submitted to the electors at such election. If, upon a canvass of the votes cast at such election, it appears that not less than two thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the council or other legislative body to pass an ordinance providing for the mode of creating such indebtedness, and of paying the same; and in such ordinance provision shall be made for the levy and collection of an annual tax upon all the real and personal property subject to taxation, within such city, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than forty years from the time of contracting the same. It shall be the duty of the council or other legislative body in each year thereafter, at the time when other taxes are levied, to levy a tax sufficient for such purpose, in addition to the taxes authorized to be levied for city purposes. Such tax, when collected, shall be kept in the treasury as a separate fund, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

COMMISSIONERS' NOTE: The time for which bonds may run has been increased to forty years' in accordance with the general law.

Conditions of sewer bonds.

SEC. 4431*b*. If bonds are issued under the provisions of the last section, said bonds shall be in sums of not less than one hundred dollars nor more than one thousand dollars, shall be signed by the mayor or other chief presiding officer, and the treasurer of the city, and the seal of the city shall be affixed thereto. Coupons for the interest shall be attached to each bond, signed by the officers aforesaid. Said bonds shall bear interest, to be fixed by the council or other legislative body, at the rate of not to exceed five per cent per annum.

How sewer bonds sold.

SEC. 4431*c*. Before the sale of said bonds, the council or other legislative body shall, at a regular meeting, by resolution,

declare its intention to sell a specified amount of said bonds, and the day and hour of such sale, and shall cause such resolution to be entered in the minutes, and shall cause notice of such sale to be published for fifteen days in at least one newspaper published in the city in which the bonds are issued, and one published in the city and county of San Francisco, and in any other newspaper in the state, at their discretion. The notice shall state that sealed proposals will be received by the city for the purchase of the bonds on the day and hour named in the resolution. The council or other legislative body, at the time appointed, shall open the proposals and award the purchase of the bonds to the highest bidder, but may reject all bids.

May be sold at not less than par, without notice.

SEC. 4431*d*. The council or other legislative body may sell said bonds at not less than par value, without the notice provided for in the preceding section.

Surplus proceeds may be transferred to general fund.

SEC. 4431*e*. The proceeds of the sale of the bonds shall be deposited in the city treasury to the account of the sewer fund, but no payment therefrom shall be made, except to pay for the construction of the sewer or sewers for the construction of which bonds were issued, and upon the certificate of the superintendent of streets and the city engineer that the work has been done according to the contract; *provided*, that after the completion of the sewers for the construction of which said bonds were issued, if there be any money of said fund left in the treasury, the same may be transferred to the general fund for general purposes.

How contracts for sewer work let.

SEC. 4431*f*. Whenever said council or other legislative body shall determine to construct any sewer, and pay therefor out of the street contingent fund, or by the issuance of bonds, as above provided, then said body shall cause to be prepared plans and specifications of said work in sections, and shall advertise for twenty days in at least one newspaper published in the city in which the sewer is to be constructed, and, at their discretion, one in the city and county of San Francisco, for sealed proposals for constructing said sewer. The work may be let in sections, and must be awarded to the lowest responsible bidder, the council or other legislative body having the right to reject any and all bids. The work shall be done and the materials furnished under the supervision and to the satisfaction of the superintendent of streets and the city engineer.

Duties of city engineer.

SEC. 4431*g*. The city engineer, or where there is no city engineer, the county, or city and county surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this chapter, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this chapter as in other cases. In all those cities where there is no city engineer, the council or other legislative body thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of city engineer, and all the provisions hereof applicable to the city engineer shall apply to such person so appointed. Said council or other legislative body is hereby empowered to fix his compensation for such services.

Notices, how published or posted.

SEC. 4431*h*. The notices, resolutions, orders, or other matter required to be published by the provisions of this chapter shall be published in a daily newspaper, if there be any in such city, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the council or other legislative body of such city, as often as the same is issued, and no other statute shall govern or be applicable to the publications herein provided for; *provided*, *however*, that only in case there is no daily, semi-weekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matter, as herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same daily, semi-weekly, or weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this chapter, shall be necessary to give validity to any of the proceedings provided for therein.

COMMISSIONERS' NOTE: The two preceding sections were subdivisions 1 and 4 of section 34 of the original act. The remainder of said section dealt only with definitions of terms used therein, and will be found embodied in section 4430; subdivision 14 of said section 34 has been omitted as no longer necessary.

Street superintendent may appoint inspector.

SEC. 4431*i*. The superintendent of streets shall, when in his judgment it is necessary, appoint a suitable person to take charge of and superintend the construction and improvement of each and every sewer constructed or improved under the provisions of this chapter, and of piling and capping, sidewalking, or of the paving of whatever character heretofore mentioned, in whole or in part, of one block or more, whose duty it shall be to see that the contract made for the doing of said work is strictly fullfilled in every respect, and in case of any departure therefrom to report the same to the superintendent of streets. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed four dollars per day. The sum to which the party so employed shall be entitled shall be deemed to be incidental expenses, within the meaning of those words as defined in section 4430.

COMMISSIONERS' NOTE: Section 36, providing for repeal of act of March 6, 1883, and for completion of work commenced under said act, is omitted as unnecessary.

Work commenced under former acts, not affected thereby.

SEC. 4431*j*. Any work or proceeding of the council or other legislative body of any city commenced under the act from which this chapter is drawn, viz.: the act of March eighteenth, eighteen hundred and eighty-five, and acts amendatory thereof, shall in nowise be affected hereby, but shall in all respects be finished and completed thereunder.

ARTICLE III.

CHANGE OF GRADE OF STREETS.

Section 4432. Change of grade of streets.
4432*a*. Owner may file petition for damages.
4432*b*. Board of commissioners, of whom composed.
4432*c*. Same. Must assess benefits and damages.
4432*d*. Same. Must report to council.
4432*e*. Report must be in writing; what to contain.
4432*f*. Report to be filed. Notice thereof to be given.
4432*g*. Objections may be filed and heard.
4432*h*. Assessment, how made.
4432*i*. Report of commissioners to be assessment roll.
4432*j*. Street superintendent to give notice of receipts of assessment roll.
4432*k*. Sale may be postponed; how conducted.
4432*l*. Owner may designate what portions to be first sold.
4432*m*. Street superintendent to give certificate of sale.
4432*n*. Redemption, how made.
4432*o*. Street superintendent to give deed.
4432*p*. Warrant for amount of damages.
4432*q*. If warrant not accepted, premises may be condemned.

COMMISSIONERS' NOTE: The following sections, 4432 to 4432*q*, constituted sections 38 to 51 of the Vrooman act, being the amendment of March 9, 1893

(Stats. 1893, 89). There have been made such additions as were necessary to provide the method of selling lands for delinquent street assessments. The act is complicated, and much of it is necessarily repeated in the following article upon the opening, widening, etc., of streets. The Commissioners have not deemed it best, however, to amend the article by substituting any more simple or desirable procedure.

Change of grade of streets.

SEC. 4432. The council or other legislative body of any municipal corporation is hereby empowered to change or modify the grade of any public street, road, lane, alley, place, court, highway, or public passageway within or under the jurisdiction or control of such municipality, and to regrade, or repave, or otherwise improve the same, so as to conform to such modified grade, in the manner as hereinafter provided. Before any change of grade is ordered the council, or other legislative body, shall pass an ordinance or resolution of intention to make such change or modification of grade, and it shall have power at the same time, and in the same ordinance or resolution, to provide for the actual cost of performing the work of regrading, repaving, sewering, sidewalking, or curbing of said street, or portion of street, with the same or other material with which it was formerly graded, paved, sewered, sidewalked, or curbed; and that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such changed or modified grade. One or more streets or blocks of streets may be embraced in the same ordinance or resolution. Such ordinance or resolution shall be published in the newspaper in which the official notices of the council, or other legislative body, are usually printed and published; and such newspaper is to be designated in such ordinance or resolution. Such publication shall be made in every regular issue of such paper for not less than ten days, and shall describe the proposed change or modification of grade or regrading, and shall designate and establish the district to be benefited by such change or modification of grade or regrading, and to be assessed for the cost of the same. Within five days after the first publication of the ordinance or resolution of intention, the superintendent of streets shall cause to be conspicuously posted within the district designated in the ordinance or resolution, notice of the passage of said resolution. Said notices shall be the same in all requirements of contents and posting as the "notices of street work" provided for in section 4430*c*. If no objection to said proposed change or changes, or modifications of grade, shall be filed with the clerk of the council or other legislative body within thirty days from the first publication of the ordinance

or resolution of intention hereinbefore mentioned, said body shall have power to declare such grades to be changed and established in conformity to said ordinance or resolution; *provided*, that no change of an established grade shall be ordered except on petition of the owners of a majority of the property affected by the proposed change of grade.

Owner may file petition for damages.

SEC. 4432*a*. Within thirty days after the publication of said notice, any person owning property fronting upon said portions of the street or streets where such change of grade is made may file a petition with the clerk of the council or other legislative body showing the fact of such ownership, the description and situation of the property claimed to be damaged, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by oath of the petitioners or their agents.

Board of commissioners, of whom composed.

SEC. 4432*b*. Whenever such petition or petitions have been filed, the mayor, surveyor, and superintendent of streets of the municipality, acting as a board of commissioners, shall assess the benefits, damages, and costs of the proposed change of grade upon each separate lot of land situated within such assessment district, as said lot appears of record upon the last municipal assessment roll.

Same. Must assess benefits and damages.

SEC. 4432*c*. The commissioners shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability without fear or favor. They shall have power to subpœna witnesses to appear before them, to be examined under oath, which any one of said commissioners is authorized to administer.

COMMISSIONERS' NOTE: Sections 41 and 42 of the original act have been combined and inserted as one section.

Same. Must report to council.

SEC. 4432*d*. The commissioners having determined the damage which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges, and expenses of the proceedings, upon the several lots of land benefited within the district of assessment, so that each of the lots shall be assessed in accordance with its benefits caused by such work or improve-

ment; and during the progress of their work shall make a report to the council, or other legislative body, as often as it may be required.

Report must be in writing; what to contain.

SEC. 4432*e*. The commissioners shall make their report, in writing, and shall subscribe to the same and file with the council or other legislative body. In their said report they shall describe separately each piece of property which will sustain damage, stating the amount of damage each will sustain over and above all benefits. They shall also give a brief description of each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of damages assessed against the same. In case the three commissioners do not agree, the award agreed upon by any two of them shall be sufficient. In designating the lots to be assessed, reference may be had to a diagram of the property in the district affected; such diagram to be attached to and made a part of the report of the commissioners.

Report to be filed. Notice thereto to be given.

SEC. 4432*f*. If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt of the ownership of any lot or land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or particulars of their interest, shall not affect the validity of the assessment. On the filing of said report, the clerk of the council or other legislative body shall give notice of such filing by the publication for at least ten days in one or more daily newspapers published and circulated in said city; or if there be no daily newspaper, by three successive issues in a weekly or semi-weekly newspaper so published and circulated; and said notice shall require all persons interested to show cause, if any, why such report should not be confirmed before the council or other legislative body, on a day to be fixed by said body and stated in said notice, which day shall not be less than twenty days from the first publication thereof.

Objections may be filed and heard.

SEC. 4432*g*. All objections shall be in writing and filed with the clerk of the council or other legislative body, who shall, at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before said body,

which shall fix a time for hearing the same; of which time the clerk shall notify the objectors in the same manner as objectors to the original resolution of intention are notified. At the time set, or at such other time as the hearing may be adjourned to, the city council shall hear such objections and pass upon the same, and at such time shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report and plat, which shall be filed, notice given and had, as in the case of an original report. In case the ordinance or resolution of intention also provides for the assessing upon the district the cost of regrading or repaving such street or streets to such changed or modified grade, after the report of the commissioners as to the damages caused by such change of grade has been passed upon by the city council, it shall then advertise for bids to perform the work of regrading, repaving, sewering, sidewalking, or curbing such street or streets with the same or other material with which the same had been formerly graded, paved, sewered, sidewalked, or curbed; first causing a notice with specifications to be posted conspicuously for five days on or near the council chamber door, inviting sealed proposals for bids for doing such work, and shall also cause notices of said work, inviting said proposals and referring to the specifications posted or on file, to be published two days in a daily, semi-weekly, or weekly newspaper published and circulated in said city, and designated by the council or other legislative body for that purpose, and in case there is no newspaper published in the city, then it shall be posted as provided in section 4430*b*. All proposals or bids offered shall be accompanied by a check, payable to the order of the mayor or other chief presiding officer of the city, and certified by a responsible bank for that amount, which shall not be less than ten per cent of the aggregate of the proposals; or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said council or other legislative body, and said body shall, in open session, examine and publicly declare the same; *provided, however*, that no proposal or bid shall be considered unless accompanied by a check or a bond satisfactory to it. The council or other legislative body may reject any and all bids, and may award the contract to the lowest responsible bidder, which award shall be approved by the mayor or the three-fourths vote of the city council. If not so approved, the council

or other legislative body may readvertise for proposals or bids for the performance of the work, as in the first instance, and thereafter proceed in the manner in this section provided. All checks accompanying bids shall be held by the clerk until the bearer has entered into a contract, as herein provided; and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city, and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted, and the amount thereon collected paid into such fund. Notice of the awards of the contracts shall be published and posted in the same manner as hereinbefore provided for the posting of proposals of said work.

Assessment, how made.

SEC. 4432*h*. After such contract has been awarded and entered into, the clerk shall certify that fact to the council or other legislative body, together with the total amount of the cost of the same, whereupon said body shall cause to be forwarded to the commissioners a copy of such certificate; whereupon said body shall proceed to assess the cost of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its portion of the same, according to the benefits it receives from the work, and in the same manner in which the damages caused by the change of grade were assessed upon the same. Such commissioners, in making such assessment, shall show the total amount for which each lot or tract is assessed, in excess of all benefits, for the total cost of changing and modifying the grade of the street, as well as the regrading, repaving, sewering, sidewalking, and curbing of the same, and costs or damages connected therewith.

COMMISSIONERS' NOTE: The above section was amended by striking out the portion thereof providing that certain portions of the original act were not applicable.

Report of commisssioners to be assessment roll.

SEC. 4432*i*. The clerk shall forward to the street superintendent a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the council or other legislative body. Such certified copy shall thereupon be the assessment roll, the cost of which shall be provided for by the commissioners, as a portion of the cost of the proceedings therein. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

Street superintendent to give notice of receipt of assessment roll.

SEC. 4432*j*. The superintendent of streets shall thereupon give notice, by publication for ten days in one or more daily newspapers published and circulated in said municipality, or two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment roll and that all sums levied and assessed in said assessment roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of such delinquent assessments, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "paid" and the date of payment opposite the respective assessment so paid, and the name of the persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, and to collect the same by the sale of the assessed property in the manner herein provided for; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received, unless at the same time the five per cent added to as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published daily for five days, in one or more daily newspapers published and circulated in such city, or by at least two insertions in a weekly newspaper so published and circulated before the day of sale for such delinquent assessment. The superintendent of streets must append and publish with the delinquent list a notice that unless the assessment, together with the costs and percentage,

are paid, the real property upon which such assessments are a lien will be sold at public auction. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said superintendent of streets.

COMMISSIONERS' NOTE: The above section is a portion of section 49 of the act, the remainder of which will be found in section 4432*o post*. The commissioners have deemed it necessary to embody here so much of the former provisions for the sale of lands for delinquent state and county taxes as may be necessary for the sale of lands delinquent for street assessments. The amendments of 1895 to the revenue laws provided that the state should purchase all lands sold for delinquent taxes. Therefore, it is no longer sufficient to provide that the sales contemplated in this chapter shall be "in the same manner as is, or may be provided for the collection of state and county taxes." Such sections and parts of sections of the old code have therefore been added here as will provide a means of disposing of the lands sold for delinquent street assessments.

Sale may be postponed—how conducted.

SEC. 4432*k*. He may postpone the day of commencing sale, or the sale from day to day; but the sale must be completed within thirty days from the day first fixed. The sale must be held between the hours of ten A. M. and three P. M., and must be made in alphabetical order, or in the numerical order of the lots or parcels as advertised.

COMMISSIONERS' NOTE: This section is drawn from old sections 3771 and 3772.

Owner may designate what portions to be first sold.

SEC. 4432*l*. The owner or person in possession of any such property may designate, in writing, to the street superintendent, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the street superintendent may designate it, and the person who will take the least quantity of land, and pay the assessments and costs due, including twenty-five cents for the certificate of sale, is the purchaser. In case there is no purchaser in good faith for the same, the whole amount of the property assessed shall be struck off to the municipality, as the purchaser.

Street superintendent to give certificate of sale.

SEC. 4432*m*. After receiving the amount of the assessment and costs, the street superintendent must make out and deliver to the purchaser a certificate, dated on the day of the sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for assessment for (giving name of street and character of street

work, and the amount and date of the assessment), and specifying the time when the purchaser will be entitled to a deed.

COMMISSIONERS' NOTE: The above is old section 3776.

Redemption, how made.

SEC. 4432*n*. A redemption of the property sold may be made by the owner or any party in interest, within one year from the date of the purchase, or at any time prior to the giving of a deed as herein provided. If such redemption is made within three months from the date of purchase, the redemptioner must pay, in addition to the assessments and costs, including twenty five cents for the certificate of sale and a like amount for a certificate of redemption, ten per cent of the amount paid by the purchaser; if made after three and within six months, twenty per cent, if made any time after six months, twenty-five per cent.

COMMISSIONERS' NOTE: The above is old section 3780, amended.

Street superintendent to give deed.

SEC. 4432*o*. If the property is not redeemed within the time allowed by law for its redemption, the street superintendent, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption; *provided*, *however*, that the purchaser of property sold for delinquent assessments, or his assignee, must, thirty (30) days previous to the expiration of the time for the redemption, or thirty days before he applies for a deed, serve upon the owner of the property purchased, or upon the person occupying the property, if said property is occupied, a written notice, stating that said property, or a portion thereof, has been sold for delinquent street assessments, giving the date of sale, the amount of property sold, the amount for which it was sold, the amount then due, the nature of the street work for which the assessment was made, the name of the street upon which such work was performed, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely until such notice shall have been given and said deed applied for, upon the payment of the fees, percentages, penalties, and costs required by law. In the case of unoccupied property, if the owner cannot be found a similar notice shall be posted and kept posted in a conspicuous place on the property, at least thirty days before the purchaser applies for a deed, and no deed

of the property sold at a delinquent assessment sale shall be issued by the street superintendent, or any other officer, to the purchaser of such property, until after said purchaser shall have filed with such street superintendent, or other officer, an affidavit showing that the notice hereinbefore required to be given, has been given as herein required, and that due diligence has been used to notify the owner personally, which said affidavit shall be filed and preserved by the street superintendent, or other officer, as other files, papers, and records kept by him in his office. Such person shall be entitled to receive the sum of two dollars for the service of said notice, and the making of said affidavit; which sum of two dollars shall be paid by the redemptioner at the same time and in the same manner as other costs, percentages, penalties, and fees are paid. The deed of the street superintendent, made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the guarantee. The superintendent of streets shall, from time to time, pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating each fund by the name of the street for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners, or a majority of them.

Warrant for amount of damages.

SEC. 4432*p*. When sufficient money is in the hands of the city treasurer, in the fund voted for the proposed work, or improvement, to pay the total cost for damages, as well as for the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which can be received at the office of such commissioners. Such notification may be made by depositing a notice, postage paid, in the post office, addressed to his last known place of residence. If, after the expiration of three days after the service or deposit of the notice in the post office, he shall not have applied for such warrant, the same shall be drawn and deposited with the city treasurer, to be delivered to him upon demand.

If warrant not accepted, premises may be condemned.

SEC. 4432*q*. If the owner of any premises damaged neglects or refuses, for ten days after the warrant has been placed

in the hands of the city treasurer, subject to his demand, to accept the same, the council, or other legislative body, may cause proceedings to be commenced, in the name of the municipality, to condemn said premises, as provided by law under the right of eminent domain. The ordinance, or resolution of intention, shall be conclusive evidence of the necessity of the same. Such proceedings shall have precedence, so far as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of the special fund in the treasury for that purpose. At any time after the trial and judgment entered, or pending appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum for said fund to answer the judgment, and thereupon may authorize or order the municipality to proceed with the proposed work or improvements. In case of a deficiency in said fund to pay the whole assessed judgment and damages, the council, or other legislative body, may, in its discretion, order the balance thereof to be paid out of the general fund of the treasury, or to be distributed by the commissioners over the property assessed by the supplementary assessment, but in the last named case, in order to avoid delay, such balance may be advanced out of any available fund in the treasury, and the same reimbursed from the collection of assessments. The treasurer shall pay such warrants in the order of their presentation; *provided*, that warrants for damages and for costs of performing the work shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money remains in the fund to pay all warrants of the first class before paying any of the second. The provisions of section 1251 of the Code of Civil Procedure, requiring the payment of damages within thirty days after the entry of judgment, shall not apply to damages rendered in proceedings under this chapter.

COMMISSIONERS' NOTE: Sections 52 and 53 of the act are omitted, as unnecessary.

ARTICLE IV.

OPENING, CLOSING, AND WIDENING OF STREETS.

Section 4433. Council has power over streets.
4433*a*. Resolution of intention to perform street work.
4433*b*. Street superintendent to post notices.
4433*c*. Interested persons may file objections.
4433*d*. Decision of council to be final.
4433*e*. Jurisdiction.
4433*f*. Commissioners to employ assistance.
4433*g*. Expenses to be a charge upon the particular work required.
4433*h*. Viewing of land; examination of witnesses.
4433*i*. Report to council, accompanied with a plat of the assessment district.

Section 4433*j*. Report, what must specify.
4433*k*. When set down to unknown owners.
4433*l*. Filing of report and plat, and publication of.
4433*m*. Objections must be in writing.
4433*n*. Duty of clerk of council.
4433*o*. Duty of street superintendent on receiving certified copy of report.
4433*p*. Payments for land and improvements, when and how made.
4433*q*. Proceedings to condemn on refusal to accept payment.
4433*r*. Duty of treasurer on payment of warrants.
4433*s*. Supplementary assessments, when may be ordered.
4433*t*. Proceedings when boundaries of districts affect the whole city.
4433*u*. Notices to be posted when publication cannot be had.

Council has power over streets.

SEC. 4433. Whenever the public interest or convenience may require, the council or other legislative body of any municipality shall have full power and authority to order the opening, extending, widening, straightening, or closing up, in whole or in part, of any street, road, avenue, highway, lane, alley, square, court, place, or public passageway within the bounds, or under the jurisdiction or control of such municipality, or under the control or jurisdiction thereof, and to condemn and acquire any and all land and property necessary or convenient for that purpose.

Resolution of intention to perform street work.

SEC. 4433*a*. Before ordering any work to be done or improvement made which is authorized by section 4433, the council or other legislative body shall pass a resolution declaring its intention to do so, describing the work or improvement, and the land deemed necessary to be taken therefor, and specifying the exterior boundaries of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the damages, cost, and expenses hereof.

Street superintendent to post notice.

SEC. 4433*b*. The street superintendent shall then cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, notices of the passage of said resolution. Said notice shall be headed "notice of public work," in letters not less than one inch in length, shall be in legible characters, state the fact of the passage of the resolution, its date, and briefly, the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice, similar in substance, to be published for a period of ten days in one or more daily newspapers

published and circulated in said city, and designated by the council or other legislative body of said municipality, or if there is no daily newspaper so published and circulated therein, then by four successive insertions in a weekly or semi-weekly newspaper so published, circulated, and designated.

Interested persons may file objections.

SEC. 4433*c*. Any person interested, objecting to said work or improvement, or to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the cost and expenses thereof, may make written objections to the same within ten days after the expiration of the time of the publication of said notice, which objection shall be delivered to the clerk, who shall indorse thereon the date of its reception by him, and at the next meeting of the council or other legislative body, after the expiration of said ten days, lay said objections before said body, which shall fix a time for hearing said objections, not less than one week thereafter. The clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the post office of said municipality, postage prepaid, addressed to such objector.

Decision of council to be final.

SEC. 4433*d*. At the time specified, or to which the hearing may be adjourned, the council or other legislative body of said municipality shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If such objections are sustained, all proceedings shall be stopped; but proceedings may be again commenced at any time by giving notice of intention to do said work or make said improvement. If such objection is overruled by the council or other legislative body, the proceedings shall continue the same as if such objection had not been made. At the expiration of the time prescribed during which objections to said work or improvement may be made, if no objections shall have been made, or if an objection shall have been made, and after hearing shall have been overruled, the council or other legislative body shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvements to be made, which is authorized by section 4433.

Jurisdiction.

SEC. 4433*e*. Having acquired jurisdiction as provided in the preceding section, the council or other legislative body shall

order said work to be done, and unless the proposed work is for closing up, and it appears that no assessment is necessary, shall appoint three commissioners to assess benefits and damages, and have general supervision of the proposed work or improvement until the completion thereof in compliance with this article. For their services, they shall receive such compensation as the council or other legislative body may determine from time to time; *provided*, that such compensation shall not exceed two hundred dollars per month each, nor continue more than six months, unless extended by order of the council or other legislative body. Such compensation shall be added to and be chargeable as a part of the expenses of the work or improvement. Each of said commissioners shall file with the clerk an affidavit, and a bond to the state of California in the sum of five thousand dollars, to faithfully perform the duties of his office. The council or other legislative body may at any time remove any or all commissioners for cause, upon reasonable notice and hearing, and may fill any vacancies occurring among any of them for any cause.

Commissioners to employ assistance.

SEC. 4433*f*. Said commissioners shall have power to employ such assistance, legal or otherwise, as they may deem necessary and proper; also to rent an office, and provide such maps, diagrams, plans, books, stationery, fuel, lights, postage, expressage, and incur such incidental expenses as they may deem necessary.

Expenses to be charged upon the particular work required.

SEC. 4433*g*. All such charges and expenses shall be deemed as expenses of said work or improvement, and be a charge only upon the funds devoted to the particular work or improvement as provided hereinafter. All payments, as well for the land and improvements taken or damaged, as for the charges and expenses, shall be paid by the city treasurer, upon warrants drawn upon said fund from time to time, signed by said commissioners, or a majority of them. All such warrants shall state whether they are issued for land or improvements taken or damaged, or for charges and expenses, and that the demand is payable only out of the money in said fund, and in no event shall the city be liable for the failure to collect any assessment made by virtue hereof, nor shall said warrant be payable out of any other fund, nor a claim against the city.

Viewing of land; examination of witnesses.

SEC. 4433*h*. Said commissioners shall proceed to view the lands described in the resolution of intention, and may examine witnesses on oath to be administered by any one of them. Having viewed the land to be taken, and the improvements affected, and considered the testimony presented, they shall proceed with all diligence to determine the value of the land and the damage to improvements and property affected, and also the amount of expenses incident to said work or improvement, and having determined the same shall proceed to assess the same upon the district of lands declared benefited, the exterior boundaries of which were fixed by the resolution of intention provided for by section 4433*a*. Such assessment shall be upon the lands within said district in proportion to the benefit to be derived from said work or improvement, so far as the commissioners can reasonably estimate the same, including in such estimate the property of any railroad company within said district, if such there be.

Report to council accompanied with a plat of the assessment district.

SEC. 4433*i*. Said commissioners having made their assessment of benefits and damages, shall, with all diligence, make a written report thereof to the council or other legislative body of the municipality, and shall accompany their report with a plat of the assessment district showing the land taken or to be taken for the work or improvement, and the lands assessed, showing the relative location of each district, block, lot, or portion of lot, and its dimensions, so far as the commissioners can reasonably ascertain the same. Each block and lot, or portion of lot, taken or assessed, shall be designated and described in said plat by an appropriate number, and a reference to it by such descriptive number shall be a sufficient description of it in any suit entered to condemn, and in all respects. When the report and plat are approved by the council or other legislative body, a copy of said plat, appropriately designated, shall be filed by the clerk thereof in the office of the recorder of the county.

Report, what must specify.

SEC. 4433*j*. Said report shall specify each lot, subdivision, or piece of property taken or injured by the widening or other improvement, or assessed therefor, together with the name of the owner or claimants thereof, or of persons interested therein as lessees, incumbrancers, or otherwise, so far as the same are known to such commissioners, and the particulars of their interest, so far as the same can be ascertained, and the amount

of value or damage, or the amount assessed, as the case may be.

When set down to unknown owners.

SEC. 4433*k*. If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt as to the ownership of any lot of land, or of any improvements thereon, or of any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or of the particulars of their interest, shall not affect the validity of the assessment or of the condemnation of the property to be taken.

Filing of report and plat, and publication of.

SEC. 4433*l*. Said report and plat shall be filed in the clerk's office, and thereupon said clerk shall give notice of such filing by publication for at least ten days in one or more newspapers published and circulated in said municipality, or if there be no daily paper, by three successive insertions in a weekly or semi-weekly newspaper so published and circulated. Said notice shall also require all persons interested to show cause, if any, why such report should not be confirmed, before the city council, on or before a day fixed by the clerk thereof, and stated in said notice, which day shall not be less than thirty days from the first publication thereof.

Objections must be in writing.

SEC. 4433*m*. All objections must be in writing, and filed with the clerk, who shall at the next meeting after the day fixed in the notice to show cause, lay the said objections, if any, before the council or other legislative body, which shall fix a time for hearing the same, of which the clerk shall notify the objectors in the same manner as objectors to the original resolution of intention; at the time set, or at such other time as the hearing may be adjourned to, the council or other legislative body shall hear such objections and pass upon the same; and at such time, or, if there be no objections, at the first meeting after the day set in such order to show cause, or such other time as may be fixed, shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given, and hearing had, as in the case of an original report.

Duty of clerk of council.

SEC. 4433*n*. The clerk of said council or other legislative body of said city shall forward to the street superintendent

thereof a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the council or other legislative body. Such certified copy shall thereupon be the assessment roll. Immediately upon receipt thereof by the street superintendent, the assessment contained therein shall become due and payable, and shall be a lien upon all the property contained or described therein.

Duty of superintendent of streets on receiving certified copy of report.

SEC. 4433*o*. The superintendent of streets shall thereupon give notice by publication for ten days in one or more daily newspapers published and circulated in such municipality, or by two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment roll, and that all sums levied and assessed in said assessment roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of each delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "paid" and the date of payment opposite the respective assessment so paid and the names of persons by or for whom said assessment is paid, and shall, if so required, give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of said delinquency, proceed to advertise and collect the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the manner provided in sections 4432*j*, 4432*k*, 4432*l*, 4432*m*, and 4432*o*; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received unless at the same time the five per cent added thereto, as aforesaid, together with the costs of advertising then already incurred,

shall be paid therewith. All property sold shall be subject to redemption in the time and manner provided in section 4432*n*, and the superintendent of streets may collect for each certificate twenty-five cents, and for each deed one dollar. The superintendent of streets shall, from time to time, pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating such funds by the name of the street, square, alley, court, or place for the widening, opening, or other improvement of which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners, or a majority of them.

Payments for lands and improvements, when and how made.

SEC. 4433*p*. When sufficient money is in the hands of the city treasurer, in the fund devoted to the proposed work or improvement, to pay for the land and improvements taken or damaged, and when in the discretion of the commissioners, or a majority of them, the time shall have come to make payments, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of any land or improvement thereon, to whom damages shall have been awarded, that a warrant has been drawn for the payment of the same, and that he can receive such warrant at the office of such commissioners upon tendering a conveyance of any property to be taken; such notification, except in the case of unknown owners, to be made by depositing a notice, postage paid, in the post office, addressed to his last known place of abode or residence. If, at the expiration of thirty days after the deposit of such notice, he should not have applied for such warrant, and tendered a conveyance of the land to be taken, the warrant so drawn shall be deposited with the county treasurer, and shall be delivered to such owner, possessor, or occupant, upon tendering a conveyance, as aforesaid, unless judgment of condemnation shall be had, when the same shall be canceled.

Proceedings to condemn on refusal to accept payment.

SEC. 4433*q*. If any owner of land to be taken neglects or refuses to accept the warrant drawn in his favor, as aforesaid, or objects to the report as to the necessity of taking his land, the commissioners, with the approval of the city council, may cause proceedings to be taken for the condemnation thereof, as provided by law under the right of eminent domain. The complaint may aver that it is necessary for the city to take or

damage and condemn the said lands, or an easement therein, as the case may be, without setting forth the proceedings herein provided for, and the resolution and ordinance ordering said work to be done shall be conclusive evidence of such necessity. Such proceeding shall be brought in the name of the municipality, and have precedence so far as the business of the court will permit; and any judgment for damages therein rendered shall be payable out of such portion of the special fund as may remain in the treasury, so far as the same can be applied. At any time after trial and judgment entered, or preceding an appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from the fund appropriated to the particular improvement to answer the judgment and all damages, and thereupon may authorize and order the municipality to enter upon the land and proceed with the proposed work and improvement. In case of a deficiency in said fund to pay the whole of such judgment and damages, the council or other legislative body may, in their discretion, order the balance thereof to be paid out of the general fund of the treasury or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last-named case, in order to avoid delay, such balance may be advanced out of any appropriate fund in the treasury, and reimbursed from the collections of the assessment. Pending the collection and payment of the amount of the judgment and damages, the court may order such stay of proceedings as may be necessary.

Duty of treasurer on payment of warrants.

SEC. 4433*r*. The treasurer shall pay such warrants out of the appropriate fund, and not otherwise, in the order of their presentation; *provided*, that warrants for land or improvements taken or damaged shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money is and remains in the fund to pay all warrants of the first class before paying any of the second.

Supplementary assessments, when may be ordered.

SEC. 4433*s*. If after the sale of the property for delinquent assessments there should be a deficiency, and there should be unreasonable delay in collecting the same, or if for the purpose of equalizing the assessments supplying a deficiency, or for any cause, it appear desirable, the commissioners may so report to the council or other legislative body, who may order them to make a supplementary assessment and report the same in manner and form as the original, and subject to the same

procedure. If by reason of such supplementary assessment, or for any cause, there should be at any time a surplus, the council or other legislative body may appropriate the same and declare a dividend pro rata to the parties paying the same, and they, upon demand, shall have the right to have the amount of such pro rata dividends refunded to them, or credited upon any subsequent assessment for taxes made against said parties in favor of said city.

Proceedings when boundaries of districts affect the whole city.

SEC. 4433*t*. If the council or other legislative body of the municipality deem it proper that the boundaries of the districts of lands to be affected and assessed to pay the damages, cost, and expenses of any work or improvement under this article, shall include the whole city, then the commissioners appointed shall proceed in a summary manner to purchase the lands to be taken or condemned from the owners and claimants thereof. If said commissioners and the owners and claimants cannot agree upon the price to be paid for said lands, they shall proceed to view and value the same, and shall thereupon make a summary report to the council or other legislative body of the municipality. Upon final confirmation of the report, said body, if there be not sufficient money available in the city treasury, shall cause the cost and expenses of the contemplated public improvement to be assessed upon the whole of the taxable property of said municipality, and to be included in and form a part of the next general assessment roll thereof, and with like effect in all respects as if the same formed a part of the city, state, and county taxes; and when the same shall have been collected, the said council or other legislative body shall cause the land required to be paid for, or the value thereof tendered, and the said contemplated public improvement to be forthwith made and completed. All provisions of the preceding sections not in conflict with this section shall be applicable thereto.

COMMISSIONERS' NOTE: Section 23 of the original act, except subdivisions 2 and 8 thereof, is omitted for the reason that it is covered by section 4430. Sections 24 and 25 are also omitted as unnecessary.

Notices to be posted when publication cannot be had.

SEC. 4433*u*. In case there is no daily, or weekly, or semi-weekly newspaper printed and circulated in the municipality, then such notices as are herein required to be published in a newspaper shall be posted and kept posted for the length of time required for the publication of the same in a weekly

newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, or clerk of the newspaper, or of the poster of the notice. No publication or notice other than that provided for in this act shall be necessary to give validity to any proceedings had thereunder.

COMMISSIONERS' NOTE: The preceding section was subdivisions 2 and 8 of section 23 of the original act. See note to preceding section.

ARTICLE V.

SHADE TREES AND HEDGES UPON STREETS.

Section 4434. Provisions for planting trees and trimming hedges.
4434*a*. Resolution of intention and notices.
4434*b*. Majority of owners may file written objections.
4434*c*. Jurisdiction, when acquired.
4434*d*. Bids, and the letting of contracts.
4434*e*. Bond of contractor.
4434*f*. Duty of street superintendent.
4434*g*. Payments to be by installments.
4434*h*. Assessment, diagram and warrant.
4434*i*. Warrant to be delivered to contractor.
4434*j*. Jurisdiction of council over hedges, fences, etc.
4434*k*. Council to replace and care for trees.
4434*l*. Application of article.

Provisions for planting trees and trimming hedges.

SEC. 4434. All streets in the municipalities of this state now open or dedicated, or which may hereafter be opened or dedicated, to public use, whose grade has been officially established, and which have been actually graded in conformity therewith, may be planted with shade trees, along the edges of the sidewalks thereof, by order of the council or other legislative body of such municipalities, which body shall have power, also, to provide for the maintenance and care of the same; and to prescribe the height, thickness, and manner of trimming all hedges set out, or that shall be hereafter set out, along the line of any street dedicated to the public use, whether graded or not, and to compel compliance with its ordinances in the premises by the owners or occupants of the lots fronting thereon. The powers hereby conferred upon the councils or other legislative bodies of municipalities shall be exercised in the manner and under the proceedings hereinafter described.

Resolution of intention and notices.

SEC. 4434*a*. The council or other legislative body of any municipality may, at its discretion, pass a resolution of intention to plant, or cause to be planted, with shade trees, any graded

street, road, avenue, highway, lane, alley, place, court, square, or public passageway within the limits of, or under the jurisdiction or control of such municipality. Such resolution of intention may embrace the entire length of any street, or any portion thereof, but must specify the kind of trees to be planted, their size, age, and their distance apart. The street superintendent shall thereupon cause to be conspicuously posted along both sides of the street mentioned in the resolution, at not more than three hundred feet in distance apart, notices of the passage of said resolution. Said notice shall be headed "Notice to plant shade trees," in letters not less than one inch in length, and shall, in legible characters, set forth the language of the resolution and the date of its passage. The city clerk shall also cause a copy of the resolution to be published for six days in one or more daily newspapers published and circulated in said city, and designated by said council or other legislative body.

Majority of owners may file written objections.

SEC. 4434*b*. The owners of a majority of the frontage of the property on both sides of the street proposed to be planted as aforesaid, may, within ten days after the expiration of the time of publication of the resolution, file their written statement of objections to the proposed work with the city clerk, which must be signed by the objectors, each one writing after his or her name the number of feet frontage owned by him or her. Such objection must show wherein the parties making them will be injured or aggrieved by the proposed work, and if the objection be to the kind of trees proposed to be planted, they must name some other kind of tree to be substituted therefor. The council or other legislative body shall, at the next meeting after the filing of said objections, fix a time for hearing the same, not less than one week thereafter. The city clerk shall thereupon notify each objector, or his agent, who has signed his or her name to the statement, by depositing, in the post office of said city, a notice addressed to him or her, postage prepaid, notifying the objectors of the time and place of hearing. At the time specified, the council or other legislative body shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive, except that in the choice of trees to be planted, it shall be governed by the written request of the owners of a majority of the frontage on both sides of the street which it is proposed to plant. If the objections be sustained, no further proceedings shall be taken under the resolution of intention for six months after the date of its passage. If it be

again proposed to plant the street, the council or other legislative body shall commence proceedings *de novo* as if no action had been previously taken.

Jurisdiction, when acquired.

SEC. 4434*c*. At the expiration of ten days after the expiration of the time of publication of said resolution of intention, if no written objections to the work therein described shall have been filed with the city clerk, as hereinbefore provided, or if objections have been filed, then, immediately upon the overruling of the same by the council or other legislative body, said body shall be deemed to have acquired jurisdiction to order to be done the work which is authorized by this article, which order shall be published for two days in the same papers and manner as provided for the publication of the resolution of intention.

Bids, and the letting of contracts.

SEC. 4434*d*. Before passing any resolutions for the planting of any street, the council or other legislative body shall cause notice, with specifications, to be posted conspicuously for five days near the door of the council chamber, and shall advertise the same for five days in the same manner and papers as heretofore provided for the publication of the resolution of intention, inviting sealed proposals for bids for furnishing the trees and doing the work ordered. All bids shall state the sum or price for which the bidder will undertake to furnish the trees, of the kind, age, and size required, and that the bidder will suitably prepare the ground, set out the trees, warrant every one of them to grow, or replace all that fail to grow, or receive damage from whatever cause, with others of the same kind, and of suitable age and size to preserve uniformity, and will, for three years, care for, cultivate, protect, irrigate, and trim said trees. And no order for the planting of any street shade trees shall be made that does not likewise provide for the care and maintenance of the trees for three years by the contractor planting the trees. All proposals or bids shall be accompanied by a check payable to the order of the mayor or other chief executive officer of the municipality, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal. Said proposals or bids shall be delivered to the city clerk, indorsed, "Proposals to plant trees," and said council or other legislative body shall, in open session, examine and publicly declare the same; *provided*, that no proposal or bid shall be

considered unless accompanied by said check. Said legislative body may reject all proposals, should it deem this for the public good, and shall reject the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and may award the contract to the lowest responsible bidder, at the prices named in his bid, which award shall be approved by the mayor, or other chief executive officer. Notice of such awards of contract shall be posted and advertised for five days, in the manner hereinbefore provided, and it shall be the duty of the superintendent of streets to enter into a contract with the bidder to whom the work shall have been awarded by the council or other legislative body, and at the prices specified in his bid; whereupon the certified checks of all other bidders shall be returned to them respectively. But if such lowest bidder neglects, fails or refuses, for fifteen days after the first posting and publication of the award, to enter into the contract, then the council or other legislative body, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and shall award the contract for said work to the then lowest bidder. If the contractor who shall have taken any contract shall not complete the planting within the time limited in the contract, or within such further time as the council or other legislative body may give him, the superintendent of streets shall report such delinquency to said body, which may relet the unfinished portion of the planting and the future care of the trees, after pursuing the formalities hereinbefore prescribed for the letting of the whole in the first instance.

Bond of contractor.

SEC. 4434*e*. All contractors shall, at the time of executing any contract for the planting and care of trees, execute a bond to the satisfaction of the mayor or other chief executive officer of the municipality with two or more sureties, and payable to the city in such sums as said officer shall deem adequate, conditioned for the faithful performance of the contract, and the sureties shall justify in double the amount mentioned in such bond, over and above all statutory exemption. Before being entitled to any contract, the bidder to whom the award shall have been made must pay into the city treasury the cost of the publication of notices, resolutions and orders, and all other incidental expenses required under the proceedings prescribed by this article.

COMMISSIONERS' NOTE: The requirement that justification of sureties should be before the recorder or justice of the peace has been omitted.

Duty of street superintendent.

SEC. 4434*f*. All work done under the provisions of this article shall be executed under the direction of the superintendent of streets, whose duty it shall be, under the general control of the council or other legislative body to see that all the obligations assumed by contractors towards the city are faithfully complied with, and that all trees furnished are sound, healthy, free from infection by insects, and of the kind, size, and age called for by the contract. He shall certify to the completion of all work, or portions of work, which, by the terms of the contract, shall entitle the contractor to payment in whole or in part, and the presentation of his certificate by the contractor shall be a condition precedent to each payment that shall become due under the contract.

Payments to be by installments.

SEC. 4434*g*. All sums due to contractors under the provisions of this article shall be payable by installments, as follows, to wit: Not more than one half the entire consideration in the contract shall be payable on the completion of the planting, and out of this amount the superintendent of streets shall see that the trees are paid for, to the party furnishing the same; one half the balance at the end of eighteen months after the completion of the planting; *provided*, all conditions shall have been complied with; the remaining one half of such balance to be paid at the end of three years after the completion of the planting; *provided*, all conditions shall have been complied with.

Assessment, diagram, and warrant.

SEC. 4434*h*. Immediately upon the execution of any contract for the planting and care of street trees under the provisions of this article, it shall be the duty of the city assessor to make an assessment to cover the sum to become due for the work specified in such contract (including all incidental expenses) upon the lots and land fronting on the street to which such contract relates, each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expenses of the work. Said assessment shall briefly refer to the contract, the work contracted for, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, the amount of each assessment, the name of the owner of each lot, if known to the assessor (if unknown, the word "unknown" shall be written opposite the number or

description of the lot, with the amount assessed thereon); and the assessor shall attach to said assessment a diagram, exhibiting the street on which the work is contracted to be done, and showing the relative location and frontage of such lot, numbered to correspond with the numbers in the assessment. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, and countersigned by the mayor or other chief executive officer. The said assessments and warrants shall be separately issued for each payment that shall be due the contractor, as specified in section 4434*g*, and shall be substantially in the following form:

By virtue hereof, I (name of the superintendent of streets), of the city of ———, county of ———, and state of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor), his agents or assigns, to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be his warrant for the same.

Date ———, ———. (Name of superintendent of streets.)

Countersigned by (name of mayor or other chief executive officer).

Recorded (date ———, ———). (Name of superintendent of streets.)

Said warrant, assessment, and diagram shall be recorded in the office of the superintendent of streets. When so recorded, the several amounts assessed shall be a lien upon the lands, lots, or portions of lots, assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged. From and after the date of said record, all persons interested in any manner in any or all of the lots assessed shall be deemed to have notice of the contents of said record.

Warrant to be delivered to contractor.

SEC. 4434*i*. After said warrant, assessment, and diagram shall have been recorded the same shall be delivered to the contractor, his agents or assigns, on demand, who shall thereby be authorized to demand and receive the amounts of the several assessments. In default whereof, and as regards forced collections, interest, cost, and penalties, and the correction of errors, the same proceedings are to be had as are specified in sections 4430*i*, 4430*j*, 4430*k*, 4430*l*, 4430*q*, and 4430*r*.

Jurisdiction of council over hedges, fences, etc.

SEC. 4434*j*. The council or other legislative body of every municipality has jurisdiction of the hedges and fences placed

by property owners along street lines, and may by ordinance prohibit the planting of thorn-bearing hedges and the use of barbed wire along street lines, and may regulate the height, width, and the mode of trimming hedges, and enforce ordinances enacted for such purposes against absentees or other negligent or recusant owners or occupants of lots or lands on which hedges are maintained. They may also condemn as public nuisances any or all weeds whose seeds are of a winged or downy nature, and are spread by the winds, and may compel the eradication of such weeds by the owners of the lots whereon they grow, or at their expense.

Council to replace and care for trees.

SEC. 4434*k*. The council or other legislative body of every municipality shall provide for the replacement of missing trees, and for the trimming and care of all trees that have or shall have been planted, for three or more years in the streets and highways, whether such planting shall have been done under this article or otherwise; the expense whereof must be defrayed out of the street fund, and the work be done by the superintendent of streets of such municipality.

Application of article.

SEC. 4434*l*. This article shall only apply to such municipalities as shall by vote of the electors residing therein determine to come within its provisions.

ARTICLE VI.

STREET IMPROVEMENT BONDS.

Section 4435. "Street-work act" defined.
4435*a*. Serial bonds may be issued for street work, when.
4435*b*. Resolutions and notices to contain descriptions of bonds.
4435*c*. Duty of street superintendent and treasurer. Form of bond.
4435*d*. Land may be sold for default in payment of principal or interest.
4435*e*. Proceedings when railroad tracks on street ordered to be improved.

"Street-work act" defined.

SEC. 4435. Wherever in this article the phrase "street-work act" is used, it means, and shall be construed to include, Articles I, II, and III of this chapter, sections 4430 et seq., and all amendments thereto which may be hereafter enacted.

COMMISSIONERS' NOTE: The above section is amended so as to refer to the proper act as codified. The municipal body or officer referred to is sufficiently indicated by the definitions in section 4430.

Serial bonds may be issued for street work, when.

SEC. 4435*a*. Whenever the council or other legislative body of any municipality shall find, upon estimates of the city engineer, that the cost of any proposed work or improvement authorized by said street-work act will be greater than one dollar per front foot along each line of the street so proposed to be improved, including the cost of intersection work assessable upon said frontage, it shall have the power, in its discretion, to determine that serial bonds shall be issued to represent the cost of said work or improvement, in the manner and form hereinafter provided. Said serial bonds shall extend over a period not to exceed ten years from their date, and an even annual proportion of the principal sum thereof shall be payable, by coupon, on the second day of January every year after their date, until the whole is paid, and the interest shall be paid semi-annually, by coupon, on the second days of January and July, respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest are paid. Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall receive all sums paid him for the principal of said bonds and the interest thereon, and from which he shall disburse such sums, upon the presentation of said coupons; and under no circumstances shall said bonds, or the interest thereon, be paid out of any other fund. Said city treasurer shall keep a register in his office, which shall show the series, number, date, amount, rate of interest, payee and indorsees of each bond, and the number and amount of each coupon of principal or interest paid by him, and shall cancel and file each coupon so paid.

Resolutions and notices to contain description of bonds.

SEC. 4435*b*. When the council or other legislative body shall determine that serial bonds shall be issued to represent the expenses of any proposed work or improvement under said street-work act, it shall so declare in the resolution of intention to do said work, and shall specify the rate of interest which they shall bear. The like description of said bonds shall be inserted in the resolution ordering the work, in the resolution of award, and in all notices of said proceedings required by said street-work act to be either posted or published; and also a notice that a bond will issue to represent each assessment of fifty dollars or more remaining unpaid for thirty days after the

date of the warrant, or five days after the decision of the said council or other legislative body upon an appeal, and describing the bonds, shall be included in the warrant provided for in section 4430*i*.

Duty of street superintendent and treasurer. Form of bond.

SEC. 4435*c*. After the full expiration of thirty days from the date of the warrant, or if an appeal be taken to the council or other legislative body, as provided in section 4430*k*, then five days after the final decision of said council, and after the street superintendent shall have recorded the return, as provided in section 4430*j*, the street superintendent shall make and certify to the city treasurer a complete list of all assessments unpaid, which amount to fifty dollars or over, upon any assessment or diagram number; and said treasurer shall thereupon make out, sign, and issue to the contractor or his assigns, payee of the warrant and assessment, a separate bond, representing upon each lot or parcel of land upon said list the total amount of the assessments against the same as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, and is also designated by its number or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map. Said bond shall be substantially in the following form:

Series (designating it), in the city (or other form of the municipality) of (naming it).

$———$\frac{}{100}$. No.———.

Under and by virtue of the laws of the state of California, I, out of the fund of the above-designated street improvement bonds, series ———, will pay to ———, or order, the sum of ——— ($———), with interest at the rate of ——— per cent per annum, and as is hereinafter specified, and at the office of the ——— treasurer of the ——— of ———, state of California. This bond is issued to represent the cost of certain street work upon ———, in the ——— of ———, as the same is more fully described in the assessment number ———, issued by the street superintendent of said ———, after his acceptance of said work, and recorded in his office. Its amount is the amount assessed in said assessment against the lot or parcel of land numbered therein, and in the diagram attached thereto, as number ———, and which now remains unpaid,

but until paid, with accrued interest, as a first lien upon the property affected thereby, as the same is described herein, and in said recorded assessment with its diagram, to wit, the lot or parcel of land in said ——— of ——— county of ———, state of California, ———.

This bond is payable exclusively from said fund, and neither the municipality nor any officer thereof is to be holden for payment otherwise of its principal or interest. The term of this bond is ——— years from its date, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year after its date an even annual proportion of its whole amount is due and payable, upon presentation of the coupon therefor, until the whole is paid, with all accrued interest at the rate of ——— per centum per annum. The interest is payable semi-annually, to wit, on the second days of January and of July in each year hereafter, upon presentation of the coupons therefor, the first of which is for the interest from date to the next second day of ———, and thereafter the interest coupons are for semi-annual interest, except the last, which is for interest from the semi-annual payment next preceding and to the date of the final maturity of this bond. Should default be made in the annual payment upon the principal, or in payment of interest from the owner of said lot or parcel of land, or any one in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law for sale of land assessed for street work and delinquent in the payment thereof.

At said ——— of ———, this ——— day of ———, in the year one thousand ——— hundred and ———.

———————,

City treasurer of the ——— of ———.

Provided, that in case the amount of unpaid assessments upon any lot or parcel of land shall be less than fifty dollars, then the same shall be collected as hereinbefore provided in Article I of this chapter; *provided, also*, that if any person, or his authorized agent, shall at any time before the issuance of the bond for said assessments upon his lot or parcel of land present to the city treasurer his affidavit, made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such owner of record, and with such affidavit and certificate such person notifies said treasurer in writing that he

desires no bond to be issued for the assessment upon said lot or parcel of land, then no such bond shall be issued therefor, and the payee of the warrant or his assigns, shall retain his right for enforcing collection as if said lot or parcel of land had not been so listed by the street superintendent. The bonds so issued by said treasurer shall be payable to the party to whom they issue or order, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order, on the second day of January in each year after the date of the bond, until all are paid, and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semi-annual interest coupons thereto attached, the first of which shall be payable upon the second day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the last of which shall be for the amount of interest accruing from the second day of January or July, as the case may be, next preceding the maturity of said bonds to the maturity thereof. The city treasurer shall, in addition to his other duties in the premises, report all coupon payments of principal upon said bonds to the street superintendent, who shall forthwith indorse the same upon the margin of the record of the assessment to the credit of which the same is paid, and said assessment shall be a first lien upon the property affected thereby until the bond issued for the payment thereof, and the accrued interest thereon, shall be fully paid. Said bonds, by their issuance, shall be conclusive evidence of the regularity of all proceedings thereto under said street-work act and this article, previous to the making of the certified list of all assessments unpaid to the amount of fifty dollars or over by the street superintendent to the city treasurer, and of the validity of said lien up to the date of said list.

Land may be sold for default in payment of principal or interest.

SEC. 4435*d*. Whenever, through the default of the owner of any lot or parcel of land to represent the assessment upon which such bond has been issued, any payment, either upon the principal or of the interest, shall not be made when the same is due, and the holder of the bond thereupon demands, in writing, that the said city treasurer proceed to advertise and sell said lot or parcel of land, as herein provided, then the whole bond, or its unpaid remainder, with its accrued interest, shall become due and payable immediately, and on the day fol-

lowing shall become delinquent; and the city treasurer shall forthwith proceed to advertise and sell said lot or parcel of land by proceedings in all respects the same as are provided by law for the collection of delinquent assessments for street work. All such provisions and proceedings, after assessments have become delinquent, including the certificate of sale, the right of redemption, and the deed with the respective costs thereof, are hereby made applicable to this case.

Proceeding when railroad tracks on street ordered to be improved.

SEC. 4435*e*. Whenever any railroad track or tracks of any description exists upon any street or streets on which the council or other legislative body of any municipality has ordered work to be done or improvements made, excepting therefrom such portions as are required by law to be kept in order or repair by any person or company having railroad tracks thereon, the said council or other legislative body may, at any time thereafter, order such person or company to perform upon such excepted portion the work or improvements, similar in all respects to that already ordered to be performed under the same specifications and superintendance, with the same materials, within the same time, and the like satisfaction and acceptance. Thereupon it shall be the duty of the clerk of said city to deliver immediately a copy of such order, certified by him, to such person or company, and to make and preserve in his office a certificate of such delivery, its date, and upon whom made. Should such person or company, for thirty days, or within such extension of time as the council or other legislative body may grant, thereafter refuse or neglect to make or have made such work or improvement in the manner or time ordered, it shall be the duty of the council, or other legislative body to have such work or improvement performed, and such refusal or neglect punished in the manner provided by law. Within fifteen days after receiving the certified copy of said order, such person or company may file with the clerk a written assumption of the performance of said work or improvement, according to the order, or a request to the council or other legislative body to have such work or improvement performed, for and at the expense of such person or company, in the manner herein provided. The failure to file such instrument within said time shall be taken and deemed to be a refusal to comply with the order. Upon reception of said assumption of direct performance of said work or improvement, the municipality shall take no further proceedings in the matter, unless such person or company neglects or fails for

thirty days, or such further time as the council or other legislative body may grant, to comply with the provisions of the order. But if such person or company files the said request that the said council have such work or improvement performed, or fails to perform such work within thirty days, or within such further time as the council or other legislative body may grant, then said council may pass an ordinance of intention to perform said work, which ordinance shall specify the work to be performed, and a statement that unless within thirty days after the recording of the return of the warrant, or within five days after the final decision of the council or other legislative body on an appeal, the said person or company shall pay the cost of said work, or the street superintendent of said city shall issue bonds to represent the cost of said work, stating also that the cost of said work, in case bonds shall issue, shall be paid in ten yearly installments, and also the rate of interest (not to exceed ten per cent per annum) that the same shall bear. The subsequent procedure shall be as provided by the "street-work act." A similar statement shall also be incorporated in all notices required to be posted or published by the provisions of the "street-work act"; also in the ordinance or resolution ordering the work, advertisement for proposals, and in the contract. Whenever the person or company owning any such railroad shall not have, within thirty days after the recording of the return of the warrant, or within five days after the final decision of the council or other legislative body on an appeal, paid the cost of such work, the street superintendent shall issue to the contractor, or his assigns, bonds for the amount of such cost, which shall describe the franchise, tracks, and roadbed along or between which said work has been performed, and describing the same as upon the assessment and diagram, giving its assessment number. Such bonds shall also describe the work performed, giving the total amount of the cost of such work, the name of the owner of said railroad, the number of installments in which the cost of the work is to be paid, and the rate of interest which the deferred payments shall bear. Said bonds shall be in sums of not less than one hundred dollars or more than one thousand dollars, and shall recite that the total amount of the cost of such work, together with the interest thereon, as represented in said bonds, is, except state, county, and municipal taxes, a first lien upon all the track, roadbed, switches, and franchises of said railroad lying within the corporate limits of the city or town, on any part of which said work has

been performed. Said street superintendent shall also keep a record of such bonds, as required by section 4430*s*. Whenever bonds have been issued, as herein provided, the same, together with the cost of such work and the interest thereon, shall be, except state, county, or municipal taxes, a first lien upon all the tracks, roadbeds, switches, and franchises of said railroad within the corporate limits of the municipality, or any part of which said work has been performed. Sections 4435*c* and 4435*d*, regarding the form, issuance, and foreclosure of street bonds, and the sale of property described therein, shall apply hereto, except that the work required to be performed by the treasurer by said sections shall be performed by the street superintendent, in so far as the bonds for the paving of railroads are concerned. None of the provisions of the "street-work act" in regard to a protest against the work shall apply to any work contemplated by this section. All provisions of the "street-work act" not inconsistent with the provisions hereof shall apply hereto.

COMMISSIONERS' NOTE: Section 7 of the original act is omitted, because included in section 4430, and section 8 is not inserted because unnecessary.

CHAPTER V.

PUBLIC LIBRARIES.

Section 4436. Municipality may levy and collect taxes for.
4436*a*. Money received shall constitute "library fund."
4436*b*. Property for library purposes shall vest in municipality.
4436*c*. Board of trustees in cities of the first class.
4436*d*. Board of trustees in cities of other classes.
4436*e*. Character and term of office of trustees.
4436*f*. Duties of trustees.
4436*g*. Powers of trustees.
4436*h*. Demand of trustees to be paid by treasurer.
4436*i*. Annual report of trustees and secretary.
4436*j*. Powers of council.
4436*k*. Provisions apply to libraries heretofore established.

COMMISSIONERS' NOTE: This chapter is drawn from the act of April 26, 1880 (Stats. 1880, 231). Such changes are suggested as were deemed necessary to adapt it to present conditions and a place in the code.

Municipality may levy and collect taxes for.

SEC. 4436. The authorities of any municipality of this state are authorized and empowered, by a resolution duly passed for that purpose, by the council or other legislative body thereof, to levy and collect, as in other cases, annually, a tax not to exceed one mill on the dollar for the purpose of establishing and maintaining therein free public libraries and reading-

rooms, and purchasing such books, journals, and other publications, purchasing and leasing such real and personal property, and erecting such buildings as may be necessary therefor.

Money received shall constitute "library fund."

SEC. 4436*a*. All money and revenue paid, collected, or received by authority of anything herein contained, whether by taxation, gift, devise, bequest, or otherwise, shall belong to and be known and designated as the "library fund," and shall be paid into the city treasury, and there kept separate and apart from other funds, and be drawn therefrom as hereinafter provided, but only to be used and applied to the purposes herein authorized.

Property for library purposes shall vest in municipality.

SEC. 4436*b*. All property, real and personal, acquired by purchase, gift, devise, bequest, or otherwise, under the provisions of, or for any purpose authorized by this chapter, shall vest, be, and remain in the municipality, and may be protected, defended, and sued for by action at law, or otherwise, in the name of such municipality as in other cases.

Board of trustees in cities of the first class.

SEC. 4436*c*. Unless otherwise provided in the charters thereof, in municipal corporations of the first class, the mayor, or chief executive officer, during his continuance in office, and eleven citizens thereof, to be appointed by the governor of this state, shall constitute the board of trustees of any library or reading-room established or acquired in such municipality under this chapter, or the act from which it is drawn.

COMMISSIONERS' NOTE: This section was section 6 of the act from which the chapter is drawn, and is made to precede section 5 of said act because it deals with the higher class of municipalities. It has been amended to accord with the present classification of cities, and to limit its application to such municipalities as have made no provision upon the subject in their charters.

Board of trustees in cities of other classes.

SEC. 4436*d*. Unless otherwise provided in the charters thereof, in all municipal corporations except of the first class, five trustees shall be elected at the same time and in the same manner as the other municipal officers are elected, and they shall hold office for a term of four years. No citizen of this state shall be disqualified by reason of sex from holding the office of library trustee. At the first meeting of every such board of library trustees, elected under the provisions of this chapter, the trustees shall by lot divide themselves into

two classes of two and three members respectively, and those trustees comprising the class of three members shall continue in office only until the next regular municipal election in their respective municipalities, and at succeeding municipal elections only such number of trustees shall be elected as may be necessary to maintain the board in accordance with the provisions of this chapter.

COMMISSIONERS' NOTE: The wording of portions of the law as it now stands has caused no little confusion and uncertainty in its execution. By one reading of section 5 it has been presumed that the legislative intent was to make the term of library trustees four years, and that a part be elected at each municipal election, just as town trustees are now chosen.

On the other hand, it is certainly inferable that the entire board of five shall be chosen at each and every biennial election, and this is the general practice.

But this opens the library to the danger of being entirely revolutionized each two years; and what is practically much worse, very frequently throws the institution into the hands of a board composed exclusively of new men, none of whom are acquainted with the workings or needs of the library. Inevitably there is loss to public and library until the new members accustom and acquaint themselves with the needs and duties involved.

There seems no sufficient reason for excluding women from part in the management of libraries, and the amendment in this regard is important.

Character and term of office of trustee.

SEC. 4436*e*. The office of such trustee shall be honorary, without salary or other compensation, and in cities of the first class shall continue during good behavior; but for good cause any trustee may be removed from office by proceedings in the superior court in behalf of the municipality in the manner provided for the removal from office of other municipal officers.

COMMISSIONERS' NOTE: In section 7 of the law the provision that "trustees hold during good behavior," evidently refers to those appointed for cities of over one hundred thousand population; yet in this section alone is found the provision that trustees serve without compensation, and in that particular at least it applies both to trustees appointed and elected. The slight changes suggested will obviate all uncertainties.

There are other crudities in the law, but they are neither so ambiguous nor so likely to interfere with the success and purposes of free libraries as those herewith proposed to be remedied.

Duties of trustees.

SEC. 4436*f*. The trustees of any library or reading-room established or acquired by authority of this chapter, or the act from which it is drawn, shall take charge of the same, and of all real or personal property thereto belonging, or that may be acquired by loan, purchase, gift, devise, or otherwise. They shall meet for business purposes on the first Tuesday of each month, and at such other times as they may

appoint, at a place to be provided for the purpose, and the majority of all their number may constitute a quorum for business. They may appoint one of their number to act as president of the board, and may elect a librarian. They shall also elect a secretary, who shall keep a full statement and account of all property, money, receipts and expenditures, and a record and full minutes in writing of all their proceedings. The secretary may certify to such proceedings, or any part or portion thereof under his hand, verified by an official seal adopted and provided by the trustees for that purpose.

Powers of trustees.

SEC. 4436*g*. Such trustees, by a majority vote of all their members, to be recorded in the minutes with the ayes and noes at length, shall have power:

1. To make and enforce all rules, regulations, and by-laws necessary for the administration, government, and protection of such library and reading-room, and all property belonging thereto, or that may be loaned, devised, bequeathed, or donated to the same.

2. To exercise and administer any trust declared or created for such library or reading-room, and to provide memorial tablets and niches to perpetuate the memories of those persons who may make valuable donations thereto.

3. To remove any trustee who may neglect to attend the meetings of the board of trustees, or who may absent himself from such meetings, or without the consent of the board, from the state for three consecutive months; and to fill all vacancies that may from any cause occur in the board, until such vacancy be filled by election or appointment as provided by law.

4. To define the powers and describe the duties of any and all officers, determine the number, and elect all necessary subordinate officers and assistants, and at their pleasure remove any officer or assistant.

5. To purchase necessary books, journals, publications, and other personal property.

6. To order the drawing and payment, upon properly authenticated vouchers, duly certified by the president and secretary, of money from out of the library fund for any liability or expenditure herein authorized; and generally to do all that may be necessary to fully carry into effect the provisions of this chapter.

7. To fix the salaries of the librarian, secretary, and other subordinate officers and assistants, and by and with the consent and approval of the council or other legislative body of

the municipality, expressed by resolution duly passed, to purchase such real estate, and erect and equip such buildings as may be necessary for such library and reading-room.

Demands of trustees to be paid by treasurer.

SEC. 4436*h*. The orders and demands of the trustees of any such library or reading-room of any municipal corporation, when duly made and authenticated as above provided, shall be verified and audited by the auditing officer, and paid by the treasurer of such municipality out of the library fund properly belonging thereto, of which full entry and record shall be kept, as in other cases.

Annual report of trustees and secretary.

SEC. 4436*i*. The trustees of such library and reading-room, on or before the first Monday in July of each year, shall make an annual report to the authorities of their municipality, giving the condition of their trust, with full statements of all property and money received, whence derived, how used and expended; the number of books, journals, and other publications on hand, the number added by purchase, gift, or otherwise, during each year, the number lost or missing, the number and character of those loaned, and such other statistics, information, and suggestions as may be of general interest. A financial report, showing all receipts and disbursements of money, shall also be made by the secretary of the board of trustees, duly verified by his oath.

Powers of council.

SEC. 4436*j*. The council, or other legislative body of any municipality wherein a public library or reading-room may be established, shall have power to pass ordinances for the protection of the same and all property thereto belonging, and for imposing penalties for the punishment of persons committing injury to such library or reading-room, or the property or books thereof, or for failure to return any book or other property belonging thereto. They shall also have power, by resolution duly passed for such purpose, to grant, donate, or authorize the use of, either in whole or in part, any land, square, or real estate belonging to such city or town, or dedicated to public use therein, for the purpose of erecting and maintaining a building to be used only for a public library and reading-room, as herein authorized.

COMMISSIONERS' NOTE: Section 13 of the original act has been omitted as unnecessary.

Provisions apply to libraries heretofore established.

SEC. 4436*k*. All libraries and reading-rooms heretofore established in any municipality under and by authority of any other statute, and all property, real and personal, thereto belonging, shall be turned over to the charge, custody, and administration of such trustees as may be continued or appointed therein respectively under the provisions of this chapter, with like powers and liabilities as if such library had been established under this chapter.

CHAPTER VI.

CHARTER FOR MUNICIPAL CORPORATIONS OF THE FIFTH CLASS.

COMMISSIONERS' NOTE: This chapter is drawn from the municipal corporations act of March 13, 1883 (Stats. 1883, 93), being Chapter VI of said act with slight modifications and amendments, which are noted where they occur. See commissioners' note at beginning of title on municipal corporations, section 4350 *ante*.

ARTICLE I.

GENERAL POWERS.

General powers enumerated.

SEC. 4437. Every municipal corporation of the fifth class shall be entitled the city of —— (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

ARTICLE II.

OFFICERS.

Section 4438. Officers enumerated.
4438*a*. Election and terms of office.
4438*b*. Official bonds.
4438*c*. Vacancies.
4438*d*. Compensation.
4438*e*. Election regulations.
4438*f*. Eligibility to offices.

Officers enumerated.

SEC. 4438. The government of said city shall be vested in a board of trustees, to consist of five members; a board of education, to consist of five members; and whenever a free public library and reading-room is established therein, five trustees thereof; a recorder, a treasurer, a city attorney, a clerk, a marshal, an assessor, and such subordinate officers as are hereinafter provided for.

Election and terms of office.

SEC. 4438*a*. The members of the board of trustees, of the board of education, and whenever a free public library and reading-room is established in said city, the trustees thereof; and the city clerk, city attorney, assessor, marshal, treasurer, and recorder shall be elected by the qualified electors of said city, at a general municipal election, to be held therein on the second Monday in April in each odd-numbered year. The clerk, attorney, assessor, marshal, treasurer, and recorder shall hold office for the period of two years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. Members of the board of trustees, of the board of education, and the library trustees shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. The board of trustees may, in their discretion, appoint a poundmaster, also a superintendent of streets, and a city engineer, all of whom shall hold office during the pleasure of the board.

COMMISSIONERS' NOTE: The provision as to the classification of the board of trustees has been stricken out as no longer necessary. There has been added a provision for trustees of a free public library and reading-room in accordance with the act of April 1, 1897 (Stats. 1897, 403).

Official bonds.

SEC. 4438*b*. The clerk, treasurer, attorney, and marshal shall, respectively, before entering upon the duties of their respective offices, each execute a bond to such city, in such penal sum as the board of trustees by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all officers of which he is made by this chapter ex-officio incumbent. Such bonds shall be approved by the board of trustees. All bonds, when approved, shall be filed with the clerk, except the bond of the clerk, which shall be filed with the president of the board of trustees. All the provisions of any law of this state relating to the official bonds of officers shall apply to such bonds, except as herein otherwise provided. Every officer of such city, before entering upon the duties of his office, shall take and file with the clerk the constitutional oath of office.

Vacancies.

SEC. 4438*c*. Any vacancy occurring in any of the offices provided for in this chapter shall be filled by appointment by the board of trustees; but if such office be elective, such appointee shall hold office only until the next regular election, at which

time a successor shall be elected to serve for the remainder of such unexpired term. In case a member of the board of trustees is absent from the city for the period of ninety days, unless by permission of the board of trustees, his office shall by the board be declared vacant, and the same filled as in case of other vacancies; *provided*, that in case a vacancy shall occur in the office of trustee of the free public library and reading-room, the board of trustees of said free public library and reading-room shall choose a person to fill such vacancy, who shall serve until the next general municipal election, when, if the term does not then expire, a trustee shall be elected to serve for the remainder of such unexpired term.

COMMISSIONERS' NOTE: The provision for filling vacancies in the office of library trustee was a part of the act of April 1, 1897 (Stats. 1897, 403). See note to section 4438*a*.

Compensation.

SEC. 4438*d*. The members of the board of trustees, board of education, and library trustees shall receive no compensation whatever, except that the board of trustees may receive compensation while acting as board of equalization. The treasurer, assessor, marshal, clerk, and recorder shall severally receive, at stated times, a compensation to be fixed by ordinance, by the board of trustees, which compensation shall not be increased after their election, or during their several terms of office. Nothing herein contained shall be construed to prevent the board of trustees from fixing such several amounts of compensation, in the first instance, during the term of office of any such officer, or after his election. The compensation of all other officers shall be fixed from time to time by the board of trustees.

COMMISSIONERS' NOTE: The provision preventing the reduction of the compensation of officers has been stricken out. The Constitution expressly allows such reduction.

Election regulations.

SEC. 4438*e*. All elections in such city shall be held in accordance with the general election laws of the state, so far as the same may be made applicable, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided in such city for at least thirty days next preceding such election. The board of trustees shall give such notice of each election as may be prescribed by ordinance, shall appoint boards of election, and fix their compensation, and establish election precincts and polling-places, and may

change the same; *provided*, that no part of any ward less than the whole thereof shall be attached to any other ward, or part thereof, in forming election precincts. At any municipal election the last-printed great register of the county shall be used, and any elector whose name is not upon such printed register shall be entitled to vote, upon producing and filing with the board of election a certificate, under the hand and official seal of the county clerk, showing that his name is registered and uncanceled upon the great register of such county; *provided*, that he is otherwise entitled to vote.

Eligibility to office.

SEC. 4438*f*. No person shall be eligible to hold any office in such city, whether filled by election or appointment, unless he be a resident and elector therein, and shall have resided in such city for one year next preceding the date of such election or appointment.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Section 4439. Board of trustees. Meetings.
4439*a*. Same.
4439*b*. Rules.
4439*c*. Limitation on passage of ordinances.
4439*d*. Powers of board.
4439*e*. Enacting clause of ordinances.
4439*f*. Board to audit demands.
4439*g*. Indebtedness not to exceed money provided.
4439*h*. Incurring of indebtedness to be decided at an election.
4439*i*. Street, sidewalk, and sewer work.
4439*j*. Right of way.
4439*k*. Levy of taxes.
4439*l*. Equalization.
4439*m*. Construction of act.
4439*n*. Water front fund.
4439*o*. Public work to be done by contract.

Board of trustees. Meetings.

SEC. 4439. The board of trustees shall meet on the Monday next succeeding the date of said general municipal election, shall take the oath of office, shall choose one of their number president, and shall hold regular meetings at least once in each month, at such times as they shall fix by ordinance. Special meetings may be called at any time by the president of the board or by three trustees, by written notice delivered to each member at least three hours before the time specified for the proposed meeting. All meetings of the board of trustees shall be held within the corporate limits of the city, at such place as may be designated by ordinance, and shall be public.

Same.

SEC. 4439*a*. At any meeting of the board of trustees, a majority of the trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The president of the board shall preside at all meetings of the board, and in case of his absence, the board may appoint a president pro tem., and in case of the absence of the clerk, the president or president pro tem. shall appoint one of the members of the board clerk pro tem.

Rules.

SEC. 4439*b*. The board of trustees shall judge of the qualifications of its members and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member, or other person, for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and, at the desire of any member, shall cause the ayes and noes to be taken on any question and entered on the journal.

Limitation on passage of ordinances.

SEC. 4439*c*. No resolution granting any franchise, and no ordinance for any purpose, shall be passed by the board of trustees on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, or an adjourned regular meeting, and no such resolution and no ordinance granting any franchise shall be passed without being first submitted to the city attorney. No resolution or order for the payment of money shall be passed at any other than a regular meeting, or an adjourned regular meeting, and no resolution or order for the payment of money, no resolution granting a franchise, and no ordinance for any purpose shall have any validity or effect unless passed by the affirmative vote of at least three trustees.

Powers of board.

SEC. 4439*d*. The board of trustees of such city shall have power:

1. To pass ordinances not in conflict with the constitution and laws of this state, or of the United States;

2. To purchase, lease, or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for

the benefit of the city; *provided*, that they shall not have any power to sell or convey any portion of any water front; but may rent such water front for a term not exceeding ten years for the purposes of erecting bath-houses thereon;

3. To contract for supplying the city with water, heat, light, and power for municipal purposes; to purchase, lease, or construct water works, gas and electric plants, and all machinery, conductors, and appliances necessary therefor, and to supply said city with, and to sell to the inhabitants thereof, water, light, heat, and power; *provided*, that in all cases where the estimated total value or price of the water works or electric plant sought to be purchased, constructed, or leased, together with all machinery, appliances, and appurtenances necessary therefor, shall exceed the sum of ten thousand dollars, no such purchase or lease shall be made unless the question of acquiring such property is submitted to the voters of such city, in the same manner as other propositions, at a general or special municipal election, and a majority of the electors, voting at such election, shall vote in favor of such proposition;

4. To establish, build, and repair bridges, to establish, lay out, alter, keep open, improve, and repair streets, sidewalks, alleys, squares, and other public highways and places within the city, and to drain, sprinkle, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel, and curb the same in whole or in part, and to construct gutters, culverts, sidewalks, and crosswalks therein, or upon any part thereof; to cause to be planted, set out, and cultivated shade trees therein; and generally to manage and control all such highways and places;

5. To establish, construct, and maintain drains, and sewers;

6. To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

7. To impose on and collect from every male inhabitant between the ages of twenty-one and sixty years an annual street poll tax, not exceeding two dollars, and no other road poll tax shall be collected within the limits of such city; *provided*, that any member of the volunteer fire company therein shall be exempt from such tax;

8. To impose and collect an annual license, not exceeding two dollars, on every dog owned or harbored within the limits of the city;

9. To levy and collect, annually, a property tax, which shall be apportioned as follows: For the general fund, not exceeding sixty cents on each one hundred dollars; for street fund, not

exceeding thirty cents on each one hundred dollars; for school fund, not exceeding twenty cents on each one hundred dollars; for sewer fund, not exceeding ten cents on each one hundred dollars; and the levy for all purposes for any one year for all purposes to which such funds are applicable shall not exceed one dollar on each one hundred dollars of the assessed value of all real and personal property within such city;

10. To license, for purposes of regulation and revenue, all, and every kind of business, including the sale of intoxicating liquors, authorized by law and transacted or carried on in such city, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license upon the same, and to provide for the collection of the same by suit or otherwise;

11. To improve the rivers and streams flowing through such city, or adjoining the same; to widen, straighten, and deepen the channels thereof, and remove obstructions therefrom; to improve the water front of the city, and to construct and maintain embankments and other works to protect such city from overflow;

12. To erect and maintain buildings for municipal purposes;

13. To permit, under such restrictions as they may deem proper, the laying of railroad tracks and running of cars drawn by horses, steam, electricity, or other power thereon, and the laying of gas, water, and other pipes in all the public streets, and to construct and maintain, and to permit the construction and maintenance of telegraph, telephone, and electric light lines therein;

14. In its discretion to divide the city, by ordinance, into a convenient number of wards, not exceeding five, to fix the boundaries thereof, and to change the same from time to time; *provided*, that no change in the boundaries of any ward shall be made within sixty days next before the date of said general municipal election, nor within twenty months after the same shall have been established or altered. Whenever such city shall so be divided into wards, the board of trustees shall designate by ordinance the number of trustees to be elected from each ward, apportioning the same in proportion to the population of such ward; and thereafter the trustees so designated shall be elected by the qualified electors resident in such ward, or by the general vote of the whole city, as may be designated in such ordinance;

15. To appoint and remove such policemen and such other subordinate officers as they may deem proper, and to fix their duties and compensation;

16. To impose fines, penalties, and forfeitures for any and all violation of ordinances, and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed three hundred dollars, nor the term of such imprisonment exceed three months;

17. To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other property, or works within the city;

18. To establish the fire limits with proper regulations;

19. To do and perform any and all other acts and things necessary and proper to carry out the provisions of this chapter, and to exact and enforce within the limits of such city all other local, police, sanitary, and other regulations as do not conflict with general laws.

COMMISSIONERS' NOTE: By the amendment of March 27, 1897 (Stats. 1897, 196), subdivision 3 of the above section provided for the purchase of water works, etc., conditioned that "where the estimated total value * * * shall not exceed the sum of ten thousand dollars," the question of such purchase shall be submitted to the people. It is evident that the intention was to place such limitation on purchases exceeding the amount named. The word "not" has therefore been omitted.

Enacting clause of ordinances.

SEC. 4439*e*. The enacting clause of all ordinances shall be as follows: "The board of trustees of the city of ——— do ordain as follows." Every ordinance shall be signed by the president of the board of trustees, attested by the clerk, and published at least once in a newspaper published in such city, or printed or posted in at least three public places therein. It shall not be necessary in any action, civil or criminal, to plead or prove the organization or existence of such corporation, nor the passage, existence, or validity of any ordinance thereof; and courts shall take judicial cognizance thereof without proof.

Board to audit demands.

SEC. 4439*f*. All demands against such city, except as otherwise by law provided, shall be presented to and audited by the board of trustees, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the president of the board shall draw a warrant upon the treasurer for the same, which warrant will be countersigned by the clerk, and shall specify for what purpose the same is drawn and out of what fund it is to be paid.

Indebtedness not to exceed moneys provided.

SEC. 4439*g*. The board of trustees shall not create, audit, allow, or permit to accrue any debt or liability in excess of the

available money in the treasury that may be legally apportioned and appropriated for such purposes, except in the manner provided by law for incurring indebtedness; *provided*, that any city during the first year of its existence under this chapter may incur such indebtedness or liability as may be necessary, not exceeding in all the income and revenue provided for it for such year; nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as hereinbefore provided.

Incurring of indebtedness to be decided at an election.

SEC. 4439*h*. If at any time the board of trustees shall deem it necessary to incur any indebtedness in excess of the money in the treasury applicable to the purposes for which such indebtedness is to be incurred, they shall give notice of a special election by the qualified electors of the city to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the purpose or purposes (if the question of indebtedness for more than one purpose be proposed) of the same, and the amount of money necessary to be raised annually by taxation for an interest and sinking fund for each purpose, as hereinafter provided. Such interest shall not be in excess of seven per cent per annum. Such notice shall be published for at least two weeks in some newspaper published and circulated in such city, and no other question or matter shall be submitted to the electors at such election. If, upon a canvass of the votes cast at such election, it appears that not less than two thirds of all the qualified electors voting at such election, or if more than one proposition is submitted, voting on such proposition, shall have voted in favor of incurring such indebtedness, it shall be the duty of the board of trustees to pass an ordinance providing for the work of creating such indebtedness and of paying the same; and in such ordinance provisions shall be made for the levy and collection of an annual tax upon all the real and personal property subject to taxation within such city, sufficient to pay the interest on such indebtedness as it falls due; and also to constitute a sinking fund for the payment of the principal thereof within a period of not more than forty years from the time of contracting the same. It shall be the duty of the board of trustees in each year thereafter, at the time at which other taxes are levied, to levy a tax sufficient for such purposes in addition to the taxes by this chapter authorized to be levied.

Such tax when collected shall be kept in the treasury as a separate fund, or funds, if indebtedness be incurred for different purposes, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

COMMISSIONERS' NOTE: The above section was amended twice at the legislative session of 1889 (Stats. 1889, 371 and 397); the amendments were substantially the same, the only provision of importance which was not included in the above amendment being a proviso limiting interest to seven per cent. That has been carried into the section as now suggested. The time for which bonds may run has been changed from twenty to forty years, to conform to the general law upon that subject.

Sections 769 and 770 of the act are omitted from this place. Section 769 is carried in as section 4443*a*, and 770 was duplicated by section 812 of the act. (See Section 4443*b*, *post*.)

Street, sidewalk, and sewer work.

SEC. 4439*i*. The board of trustees are hereby authorized and empowered to order any work authorized by this chapter to be done upon the streets, avenues, highways, and public places of such city. The cost and expense incurred therefor shall be paid as follows, to wit: The expense or cost of improving and repairing streets, sidewalks, alleys, squares, and other public highways and places within the city, removing obstructions therefrom, grading, paving, macadamizing, graveling, and curbing the same, and constructing gutters, culverts, and sidewalks therein, shall be assessed upon the lots and lands fronting thereon, each lot or portion of a lot being separately assessed for the full debt thereof in proportion to the benefits upon the property to be benefited, sufficient to cover the total expense of the work to the center of the street on which it fronts; *provided*, that the board of trustees may expend from the general fund for said purposes a sum not exceeding one hundred dollars on any one street in any one year. The expense of all improvements in the space formed by the junction of two or more streets, or where one main street terminates in or crosses another main street, and also all necessary street crossings, or crossways at corners or intersection of streets, and the expense of establishing, building, and repairing bridges in such city, shall be paid by such city. The expense incurred in making and repairing sewers in any streets shall be paid one fourth by the owner of the lands on one side of said street, one fourth by the owner of the land on the other side of said streets, and one half by the city out of the sewer fund. In all the streets constituting the waterfront of such city, or bounded on the one side by the property thereof, the expense of work done on that portion of said streets, from the center line thereof to the said waterfront,

or to such property of the city bounded thereon, shall be paid for by such city; but no contract for any such work shall be given except to the lowest responsible bidder, and in the manner hereinafter provided. When any work or improvements mentioned in this section is done or made on one side of the center line of said streets, avenues, or public highways, the lots or portions of lots fronting on that side only shall be assessed to cover the expenses of said work, according to the provisions of this chapter. Whenever any expenses or cost of work shall have been assessed on any lands, the amount of said expenses shall become a lien upon said lands which shall take precedence of all other liens, and which may be foreclosed in accordance with the provisions of the Code of Civil Procedure. Said suit shall be in the name of the city of (naming it), as plaintiff. Upon the filing of a complaint in the superior court to enforce a lien of any kind hereon, the plaintiff shall be entitled, if a recovery is had, or the money is paid, to include as costs the sum of twenty-five dollars as attorneys fees.

Right of way.

SEC. 4439*j*. Whenever it shall become necessary for the city to take or damage private property for the purpose of establishing, laying out, extending, and widening streets, and other public highways, and places within the city, or for the purpose of rights of way for drains, sewers, and aqueducts, and for the purpose of widening, straightening, or diverting the channels of streams, and the improvements of waterfronts, and the board of trustees cannot agree with the owner thereof as to the price to be paid, the trustees may direct proceedings to be taken under section twelve hundred and thirty-seven, and following sections to and including section twelve hundred and sixty-three of the Code of Civil Procedure, to procure the same.

Levy of taxes.

SEC. 4439*k*. The board of trustees shall have the power, and it shall be their duty, to provide by ordinance a system for the assessment, levy, and collection of all city taxes not inconsistent with the provisions of this chapter. Which system shall conform, as nearly as the circumstances of the case may permit, to the provisions of the laws of this state in reference to the assessment, levy, and collection, and except as to the officers by whom such duties are to be performed, and except that the provisions requiring the state to purchase all property sold for non-payment of taxes shall

not apply thereto. All taxes shall be collected by the marshal, or treasurer, as may be determined by the board of trustees by ordinance. All taxes assessed, together with any percentage imposed for delinquency and the cost of collection, shall constitute liens on the property; every tax upon the personal property shall be a lien upon the real property of the owner thereof. The liens provided for in this section shall attach as of the first Monday in March of each year, and may be enforced by a sale of the real property affected, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance, or by action in any court of competent jurisdiction to foreclose such liens; *provided*, that any property sold for such taxes shall be subject to redemption within the time and in the manner and upon the terms provided, or that may hereafter be provided by law for the redemption of property sold for state taxes. All deeds made upon any sale of property for taxes, or special assessments under the provisions of this chapter, shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for nonpayment of state taxes.

Equalization.

SEC. 4439*l*. The board of trustees shall meet at their usual place of holding meetings on the second Monday of August of each year, at ten o'clock in the forenoon of said day, and sit as a board of equalization, and shall continue in session from day to day until all the returns of the assessor have been rectified. They shall have power to hear complaints, and to correct, modify, or strike out any assessment made by the assessor, and may, of their own motion, raise any assessment, upon notice to the party whose assessment is to be raised. The corrected for each tax shall be the assessment roll for said tax for said year. It shall be certified by the city clerk, who shall act as clerk of the board of equalization, as being the assessment roll for said tax, and shall be the assessment roll upon which such tax is to be levied in said year.

Construction of act.

SEC. 4439*m*. Nothing in this chapter contained shall be construed to prevent any city having a bonded indebtedness contracted under laws heretofore passed from levying and collecting such taxes for the payment of such indebtedness and the interest thereon, as are provided for in such laws, in addition to the taxes herein authorized to be levied and col-

lected; nor to prevent any city from levying and collecting the tax authorized by the act entitled "An act to establish free public libraries and reading-rooms," approved April twenty-sixth, eighteen hundred and eighty, in addition to the taxes herein authorized to be levied and collected. All moneys received from licenses, street poll tax, and from fines, penalties, and forfeitures shall be paid into the general fund.

Waterfront fund.

SEC. 4439*n*. The board of trustees may also levy, and cause to be collected in each year, in addition to the taxes herein authorized to be levied and collected, a tax not exceeding ten cents on each one hundred dollars of the assessed value of all real and personal property, within such city, subject to taxation, the proceeds of which tax shall be known as the "river and waterfront improvement fund," and shall be applied to the improvement of streams, bays, and waterfronts, and the erection of embankments and other works to protect the city from overflow, and for no other purposes whatever.

Public work to be done by contract.

SEC. 4439*o*. In the erection, improvement, and repair of all public buildings, and works, in all street and sewer work, and in all work in or about streams, bays, or waterfronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditure required for the same exceeds the sum of one hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation printed and published in such city for at least two weeks, or if there be no newspaper printed or published therein, by posting the same in at least four public places therein for the same period. Such notice shall distinctly and specifically state the work contemplated to be done; *provided*, that the board of trustees may reject all bids presented, and readvertise in their discretion. The board of trustees shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest bidder, after notice, as provided in this section, and the contract therefor shall be awarded separately from all other printing.

COMMISSIONERS' NOTE: Section 778 of the act providing the powers and duties of the president of the board of trustees, and which was originally included in this article, has been transposed and carried into the succeeding article, which deals with the executive department. See next section.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Section 4440. President of the board, duties of.
4440*a*. Treasurer, duties of.
4440*b*. Assessor, duties of.
4440*c*. Clerk, duties of.
4440*d*. Attorney, duties of.
4440*e*. Marshal, duties of.

President of the board, duties of.

SEC. 4440. The president of the board of trustees shall preside over all meetings of the board at which he is present. In his absence a president pro tem. may be chosen. The president, and in his absence the president pro tem., shall sign all warrants drawn on the city treasurer, and, unless otherwise provided by said board, shall sign all written contracts entered into by said city, as such president or president pro tem. The authority and power of the president pro tem. shall continue only during the day on which he is chosen. The president and president pro tem. shall have power to administer oaths and affirmations, and take affidavits and certify the same under their hands. The president or president pro tem. shall sign all conveyances made by said city, and all instruments which shall require the seal of the city. The president is authorized to acknowledge the execution of all instruments executed by said city that require to be acknowledged. He shall have power to administer oaths and affirmations concerning any demand upon the treasury, and all matters relating to the duties of the board of trustees, and to witnesses examined in any investigation had by said board, or by any committee thereof duly authorized to make such investigation. Said president may issue subpœnas under his hand and the seal of such city, attested by the city clerk, to compel the attendance of witnesses before such board of trustees or committee thereof.

Treasurer, duties of.

SEC. 4440*a*. It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as city treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the city clerk. He shall pay out said money on warrants signed by the proper officers, and not otherwise, except interest coupons on bonds. He shall make quarterly settlements with the city clerk. He shall collect all taxes levied by the board of trustees, if so required by ordinance, and shall perform such other duties as may be imposed upon him by law, or the ordinances of such city.

Assessor, duties of.

SEC. 4440*b*. It shall be the duty of the assessor, between the first day of May and the first day of August in each year, to make out a true list of all the taxable property within the city. The mode of making out said list, and proceedings relating thereto, shall be in conformity with laws now in force regulating county assessors, except as the same may be otherwise provided in this chapter, or by ordinance. Said list shall describe the property assessed and the value thereof, and shall contain all other matters required to be stated in such lists by county assessors. Said assessor shall verify said list by his oath, and shall deposit the same with the city clerk, on or before the first Monday in August of each year. The assessor shall, during said time, also make a list of all male persons residing within the limits of such city over the age of twenty-one years, and shall verify said list by his oath, and shall, on or before the first Monday in August in each year, deposit the same with the city clerk. Said assessor and his deputy shall have power to administer all oaths and affirmations necessary in the performance of his duties.

Clerk, duties of.

SEC. 4440*c*. It shall be the duty of the city clerk to keep a full and true record of all the proceedings of the board of trustees and of the board of equalization. The proceedings of the board of trustees shall be kept in a book marked "Records of the board of trustees." The proceedings of the board of equalization shall be kept in a separate book marked "Record of the board of equalization." He shall keep a book which shall be marked "City accounts," in which shall be entered as a credit all moneys received by the city for licenses, the amount of any tax when levied, and all other moneys received; and in which shall be entered upon the debtor side all commissions deducted, and all warrants drawn on the treasury. He shall also keep a book marked "Marshal's account," in which he shall charge the city marshal with all the tax lists, if any, delivered to him, and all licenses delivered to him. He shall credit the marshal with the delinquent lists returned by him. He shall also keep a book marked "Treasurer's account," in which he shall keep a full account of the transactions of the city with the treasurer. He shall also keep a book marked "City licenses," in which he shall enter all licenses delivered by him to the marshal, and the amount thereof. He shall also keep a book marked "City ordinances," into which he shall copy all city ordinances, with his certificate annexed to said copy, stating the foregoing ordi-

nance is a full, true, and correct copy of an ordinance of such city, and giving the number and title of said ordinance, and stating the same has been published or posted according to law. Said record copy, with said certificate, or the original ordinance, shall be prima facie evidence of the contents of the ordinance, and of the due passage and publication of the same, and shall be admissible as such evidence in any court or proceeding. Said records shall not be filed in any case, but shall be returned to the custody of the city clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. Each of the foregoing books, except the records of the board of trustees and the board of equalization, shall have a general index, sufficiently comprehensive to enable a person readily to ascertain matters contained therein. The city clerk shall also keep a book marked "Demands and warrants," in which he shall note every demand against the city, and file the same. He shall state therein, under the note of the demands, the final disposition made of the same; and if the same is allowed and a warrant is drawn, he shall also state the number of the warrant, with sufficient dates. This book shall contain an index, in which reference shall be made to each demand. Upon the completion of the assessment roll for any of the taxes of the city, and levying of the tax thereon, the city clerk shall apportion the taxes upon such assessment roll, and shall deliver it to the officer charged with the duty of collecting taxes. It shall not be necessary to make a duplicate assessment roll. He may appoint a deputy, for whose acts he and his bondsmen shall be responsible; and he and his deputy shall have power to administer oaths and affirmations, to take affidavits and depositions to be used in any court or proceeding in the state, and to certify the same. He and his deputy shall take all necessary affidavits to demands against the city, and certify the same without charge. He shall be the custodian of the seal of such city. He shall make a quarterly statement, in writing, showing the receipts and expenditures of the city for the preceding quarter, and the amount remaining in the treasury. He shall, at the end of every fiscal year, make a full and detailed statement of the receipts and expenditures of the preceding year, and a full statement of the financial condition of the affairs of the city, which shall be published. He shall perform such other services as this chapter and the ordinances of the board of trustees shall require.

City attorney, duties of.

SEC. 4440*d*. It shall be the duty of the city attorney to advise the city authorities and officers in all legal matters pertaining to the business of said city, and to render such other services in the line of his profession as may be required of him by the board of trustees.

Marshal, duties of.

SEC. 4440*e*. The department of police of said city shall be under the direction and control of the city marshal, and for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities, in the lawful exercise of their functions, he shall have the powers that are now or may hereafter be conferred upon sheriffs by the laws of the state, and shall, in all respects, be entitled to the same protection; and his lawful orders shall be promptly executed by deputies, police officers, and watchmen of said city, and every citizen shall also lend him aid, when required, for the arrest of offenders and maintenance of public order. He shall and is hereby authorized to execute and return all process issued and directed to him by any legal authority. It shall be his duty to prosecute before the recorder all breaches, or violations, or of non-compliance with any city ordinance which shall come to his knowledge. He shall collect all taxes levied by the board of trustees, except as is herein provided. He shall, at the expiration of any month, pay to the city treasurer all taxes and other funds of said city collected by him during said month. He shall, upon payment of the money, file with the treasurer an affidavit, stating that the money so paid is all the taxes or funds that he has collected or received during the preceding month. He shall, upon the receipt of any tax list, give his receipt for the same to the city clerk, and shall, upon depositing with the city clerk the delinquent tax list, take his receipt therefor. He shall receive from the clerk all city licenses, and collect the same. He shall have charge of the city prison and prisoners, and of any chain-gang that may be established by the board of trustees. He shall, for service of any process, receive the same fees as constables. He may appoint, subject to the approval of the board of trustees, one or more deputies, for whose acts he and his bondsmen shall be responsible, whose only compensation shall be fees for the service of process, which shall be the same as those allowed to the city marshal. He may also, with the concurrence of the president of the board of trustees, when the same may be by them deemed necessary for the

preservation of public order, appoint additional policemen, who shall discharge the duties assigned them for one day only. He shall perform such other services as this chapter and the ordinances of the board of trustees shall require, and shall receive such compensation from the city as shall be fixed by ordinance, in addition to such mileage and fees as he shall receive in the service of process of the courts of the state, other than the recorder's court of such city, which mileage and fees shall be the same as is allowed by law to constables in the county in which such city is situated. The board of trustees shall, by ordinances not inconsistent with the provisions of this chapter, prescribe the additional duties of all officers, and fix their compensation.

ARTICLE V.

SCHOOL DEPARTMENT.

Section 4441. School district.
4441*a*. Vacancy in board.
4441*b*. Meetings of board.
4441*c*. Powers of board.
4441*d*. Board may sue and be sued.
4441*e*. Treasurer, custodian of moneys.
4441*f*. Demands.
4441*g*. President may compel attendance of witnesses.
4441*h*. Warrants.
4441*i*. Duties of secretary.
4441*j*. Fund shall not be diverted.

School district.

SEC. 4441. From and after the organization of each of such cities, the same shall constitute a separate school district, which shall be governed by the board of education of such city; *provided*, the board of supervisors may include more territory in such school district than that included in such city, and in that case such outside territory shall be deemed a part of such city for the purpose of holding the general municipal election, and shall be an election precinct by itself, and its qualified electors shall vote only for the board of education, and said outside territory shall be deemed to be a part of said city for all matters connected with the school department, and the annual levying and collecting of the property tax for the school fund.

Vacancy in board.

SEC. 4441*a*. In case a vacancy shall occur in the office of school director, the board of education shall choose a person to fill such vacancy, who shall serve until the next election, when, if the term does not then expire, a person shall be elected to serve for the remainder of such unexpired term.

Meetings.

SEC. 4441*b*. The board of education shall meet on the second Tuesday after such general municipal election and choose one of its members as president, and shall appoint a secretary who shall hold at the pleasure of said board. The regular meetings of said board shall be held as often as once in each month, in the place provided for the board of trustees, and the time for holding such meetings shall be fixed by the board of education. Special meetings of said board may be held when called by written notice, signed by its president or three of its members, and delivered personally to each of its members who shall not have signed the same. Three members shall constitute a quorum, and no business shall be transacted by said board of education without the concurrence of three of its members; but a majority of the members present at any meeting may adjourn from time to time. All meetings of said board of education shall be public, and full records of its proceedings shall be kept by the secretary of said board of education. The members of the board of education shall receive no compensation for their services as school directors.

Powers of board.

SEC. 4441*c*. The board of education shall have power:

1. To establish and maintain public schools, and to subdivide the school districts, and to fix and alter the boundaries of such subdivisions;

2. To employ and dismiss teachers, janitors, truant officers, school-census marshals, and to fix, alter, allow, and order paid their salaries or compensations, and to employ and pay such mechanics and laborers as may be necessary to carry into effect the powers hereby conferred;

3. To make, establish, and enforce all necessary or proper rules and regulations not in conflict with laws of this state, for the government and management of public schools within such city, the teachers thereof, and the pupils therein, and for carrying into effect the laws relating to education;

4. To provide for the school department of such city fuel and lights, water, printing and stationery, and to incur such other incidental expenses as may be deemed necessary by said board;

5. To build, alter, repair, rent, and provide school houses, and to furnish the same with proper school furniture, apparatus and appliances, and to insure any and all school property;

6. To purchase, receive, lease, and hold in fee, in trust for such city, any and all real estate and personal property that may have been acquired, or may hereafter be acquired, for the use and benefit of the schools of such city; *provided*, that no real estate shall be bought, sold, or exchanged, nor any expenditure incurred for the construction of new school-houses without the approval of the board of trustees; *and provided further*, that the proceeds of any such sale or exchange of real estate shall be exclusively applied to the purchase of other lots for the erecting of school-houses;

7. To grade, fence, and improve all school lots;

8. To determine annually the amount of money required for the support of the public schools and for carrying into effect all the provisions of law in reference thereto; and in pursuance of this provision, the board of education shall, at least ten days before the meeting of the board of trustees at which the annual city taxes are levied, submit in writing to the board of trustees a careful estimate of the whole amount of money to be received from the state and county, and of the amount to be required from such city for the above-mentioned purposes; and the amount so found to be required from the city shall, by the board of trustees, be added to the above amounts to be assessed and collected for city purposes, and when collected the proceeds thereof shall be immediately paid into the school fund of such city, to be drawn out only on the order of the board of education; *provided*, that such annual tax shall not exceed twenty-five cents on each one hundred dollars of the assessed valuation of the real and personal property within such city;

9. To establish regulations for the just and equal disbursement of all moneys belonging to the school fund;

10. To discharge all legal incumbrances existing at the time of the incorporation of such city, or thereafter, on any school property within such city;

11. To admit non-resident children and persons over twenty-one years of age to any of the departments of the schools of such city, upon the payment monthly, in advance, of such tuition fee as said board may establish;

12. To prohibit any children under six years of age from attending the public schools;

13. To establish and regulate the grades of schools in such city, and the course of study, and the mode of instruction to be pursued therein, and determine what text-books shall be used;

14. To do and perform, in addition to the foregoing powers,

such other acts as may be necessary or proper to carry into effect the powers hereby conferred.

Board may sue and be sued.

SEC. 4441*d*. The board of education may sue and be sued by their name of office. In any action or judicial proceeding against said board, service of process upon the president, or upon a majority of the members of the board, shall be sufficient to give the court jurisdiction to hear and determine the same.

Treasurer custodian of moneys.

SEC. 4441*e*. All moneys received by the treasurer of the county wherein such city may be situated, on account of the school fund of such city, or the school district consisting of the same, and all sums received into the county treasury which may be apportioned to said city or district, shall be paid to the treasurer of such city, by the treasurer of such county, as soon as received, or as soon as the apportionment shall be made, when apportionment is necessary, upon the order of the board of education.

Demands.

SEC. 4441*f*. The president of the board of education shall have power to administer oaths and affirmations concerning any demand upon the treasury, payable out of the school fund, and in all other matters relating to the duties of the board of education, and to witnesses examined in any investigation had by such board of education, or by a committee thereof, duly appointed by it, for that purpose.

President may compel attendance of witnesses.

SEC. 4441*g*. Said president may issue subpœnas under his hand and the seal of such city, attested by the city clerk, to compel the attendance of witnesses before such board of education, or committee thereof, who shall be entitled to the same fees as witnesses in civil cases, and who may be punished for contempt for non-attendance, or refusal to be sworn, or to answer, by the superior court of the county in which such city may be situated.

Warrants.

SEC. 4441*h*. Every claim payable out of the school fund shall be filed with the secretary of the board of education, and after it shall have been approved by the board, a certificate of such approval shall be indorsed thereon, signed by the president and secretary, and a warrant upon the school

fund shall be issued thereon for the payment of such claim; which warrant shall be signed by the president of such board, and countersigned by the secretary, and shall specify for what purpose the same is drawn.

Duties of secretary.

SEC. 4441*i*. The secretary shall report to the board annually, and at such other times as they may require, all matters pertaining to the expense, income, condition, and progress of the public schools of said city during the preceding year, with such recommendations as he may deem proper. He shall observe, and cause to be observed, such general rules and regulations for the government of and instruction in the schools, not inconsistent with the laws of the state, as may be established by the board of education. He shall attend the sessions of the board, and inform them at each session of the condition of the public schools, school-houses, school funds, and other matters connected therewith, and recommend such measures as he may deem necessary for the advancement of education in the city, and shall perform such other duties as may be required of him by the board. He shall receive as compensation for his services, payable out of the school fund, such sum as the board of education from time to time may allow.

Fund shall not be diverted.

SEC. 4441*j*. The entire revenue derived by such city from the state school fund and the state school tax shall be applied by said board of education exclusively to the support of primary and grammar schools.

ARTICLE VI.

JUDICIAL DEPARTMENT.

Section 4442. Recorder's court.
4442*a*. Powers of recorder as judge.
4442*b*. Recorder, when disqualified as judge.

Recorder's court.

SEC. 4442. A recorder's court is hereby established in such city, to be held by the recorder of such city. Said recorder's court shall have jurisdiction, concurrently with the justices' courts, of all actions and proceedings, civil and criminal, arising within the corporate limits of such city, and which might be tried in such justice's court; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city, of all actions founded upon any obligations or liability created by any ordinance, and of all prosecutions for any

violation of any ordinance. The rules of practice, and mode of proceeding, in said recorder's court, shall be the same as are or may be prescribed by law for justices' courts in like cases; and appeals may be taken to the superior court of the county in which such city may be situated, from all judgments of said recorder's court, in like manner and with like effect as in cases of appeals from justices' courts.

Powers of recorder as judge.

SEC. 4442*a*. The recorder shall be judge of the recorder's court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments. He shall be entitled to charge and receive for his services such fees as are or may be allowed by law to justices of the peace for like services, except that for his services in criminal prosecution for violation of ordinances he shall be entitled to receive only such monthly salary as the board of trustees shall by ordinance prescribe, which compensation, when once fixed, shall not be altered within two years.

Recorder, when disqualified as judge.

SEC. 4442*b*. In all cases in which the recorder is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree, or is otherwise disqualified, or in case of sickness or inability to act, the recorder may call in a justice of the peace residing in the city to act in his place and stead; or if there be no justice of the peace residing in the city, or if all those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city is situated.

ARTICLE VII.

MISCELLANEOUS PROVISIONS.

Section 4443. Collection of moneys.
4443*a*. No officer to be interested in contract.
4443*b*. Nuisances.
4443*c*. Fire departments.
4443*d*. Violation of ordinances, how punished.

Collection of moneys.

SEC. 4443. Every officer collecting or receiving any moneys belonging to, or for the use of such city, shall settle for the same with the clerk on the first Monday in each month, and immediately pay the same into the treasury, on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

No officer to be interested in contract.

SEC. 4443*a*. No officer of such city shall be interested, directly or indirectly, in any contract with such city, or with any of the officers thereof, in their official capacity, or in doing any work or furnishing any supplies for the use of such city or its officers in their official capacity; and any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such.

Nuisances.

SEC. 4443*b*. Every act or thing done, or being within the limits of such city, which is, or may be declared by law or by any ordinance of such city, to be a nuisance, shall be, and is hereby declared to be, a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

Fire departments.

SEC. 4443*c*. Fire departments in cities of the fifth class shall consist of volunteer companies of firemen, organized into engine, hose, or hook and ladder companies. Such fire department and such fire companies shall elect their own officers; *provided*, that in the election of any person as chief of any such fire department, his election shall be forthwith certified by the secretary of said department to the board of trustees of such city, and by them, at their next regular meeting, confirmed, and such chief shall give a bond to the chairman of the board of trustees of such city, in the sum of one thousand dollars; and the chief of every fire department must inquire into the cause of every fire occurring in the city, and keep a record thereof. He shall have exclusive control of the working of the fire department in time of conflagration or fire. He must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violation of ordinances relating to the prevention and extinguishment of fires when directed by the proper authorities, and institute proceedings therefor, and shall have general control, management, and direction of the fire companies, hose, hook and ladder companies, and engine and fire departments of such city, and shall perform such other duties as may be by the ordinances of said city, or

by law, imposed upon him. His compensation, which shall not be less than ten dollars per month, must be fixed and paid by the board of city trustees.

Violation of ordinances, how punished.

SEC. 4443*d*. The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted in the name of the people of the state of California. Any person sentenced to imprisonment for the violation of any ordinance may be imprisoned in the city jail, or, if the board of trustees shall by ordinance so prescribe, in the county jail of the county in which such city may be situated; in which case the expense of such imprisonment shall be a charge in favor of such county against such city.

COMMISSIONERS' NOTE: The preceding section was section 769 of the orignal act, and has been inserted here, as it properly belongs under "Miscellaneous Provisions." See note to section 4439*h*.

CHAPTER VII.

CHARTER FOR MUNICIPAL CORPORATIONS OF THE SIXTH CLASS.

COMMISSIONERS' NOTE: This chapter is drawn from the municipal corporations act of March 13, 1883 (Stats. 1883, 93), being Chapter VII of said act, with slight modifications and amendments, which are noted where they occur. See Commissioners' note at beginning of title on municipal corporations.

ARTICLE I.

GENERAL POWERS.

General powers enumerated.

SEC. 4444. Every municipal corporation of the sixth class shall be entitled the city of ———— (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever shall have and use a common seal, alterable at the pleasure of the city or town authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

ARTICLE II.

OFFICERS.

Section 4445. Officers enumerated.
4445*a*. Election and term of office.
4445*b*. Official bonds.
4445*c*. Vacancies, how filled.
4445*d*. Compensation.
4445*e*. Election provisions.
4445*f*. Eligibility to office.

Officers enumerated.

SEC. 4445. The government of such city or town shall be vested in a board of trustees, to consist of five members; a clerk, who shall be ex officio assessor; a treasurer; a marshal, who shall be ex officio tax and license collector; a recorder, to be appointed by the board of trustees; and such subordinate officers as are hereinafter provided for.

Election and term of office.

SEC. 4445*a*. The members of the board of trustees and the clerk, treasurer, and marshal, shall be elected by the qualified electors of said city or town at a general municipal election to be held therein on the second Monday in April in each even-numbered year. The clerk, treasurer, and marshal shall hold office for the period of two years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. Members of the board of trustees shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified; *provided*, that the first board of trustees elected under the provisions of this act shall, at their first meeting, so classify themselves by lot as that three of their number shall go out of office at the expiration of two years, and two at the expiration of four years. The board of trustees may, in their discretion, appoint an attorney, a poundmaster, a superintendent of streets, a civil engineer, and such police and other subordinate officers as in their judgment may be deemed necessary, and fix their compensation, which said officers shall hold office during the pleasure of said board.

Official bonds.

SEC. 4445*b*. The clerk, treasurer, and marshal shall, respectively, before entering upon the duties of their respective offices, each execute a bond to such city or town in such penal sum as the board of trustees by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex officio incumbent; such bonds shall be approved by the board of trustees. All bonds, when approved, shall be filed with the clerk, except the bond of the clerk, which shall be filed with the president of the board of trustees. All the provisions of any law of this state relating to the official bonds of officers shall apply to such bonds, except as herein otherwise provided. Every officer of such city, before entering

upon the duties of his office, shall take and file with the clerk the constitutional oath of office.

Vacancies, how filled.

SEC. 4445*c*. Any vacancy occurring in any of the offices provided for in this act shall be filled by appointment by the board of trustees; but if such office be elective, such appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term. In case a member of the board of trustees is absent from the city for a period of ninety days, unless by permission of the board of trustees, his office shall by the board be declared vacant, and the same filled as in case of other vacancies.

Compensation.

SEC. 4445*d*. The members of the board of trustees shall receive no compensation whatever. The clerk, treasurer, marshal, and recorder shall severally receive, at stated times, a compensation, to be fixed by ordinance by the board of trustees, which compensation shall not be increased or diminished after their election, or during their several terms of office. Nothing herein contained shall be construed to prevent the board of trustees from fixing such several amounts of compensation in the first instance, during the term of office of any such officer, or after his election. The compensation of all other officers shall be fixed from time to time by the board of trustees.

Election provisions.

SEC. 4445*e*. All elections in such city shall be held in accordance with the general election laws of this state, so far as the same may be made applicable, and no person shall be entitled to vote at such election unless he shall be qualified elector of the county, enrolled upon the great register thereof, and shall have resided in such city for at least thirty days next preceding such election. The board of trustees shall give such notice of each election as may be prescribed by ordinance, shall appoint boards of election, and fix their compensation, and establish election precincts and polling places, and may change the same. At any municipal election the last printed great register of the county shall be used, and any elector whose name is not upon such register shall be entitled to vote upon producing and filing with the board of election a certificate, under the hand and official seal of the county clerk, showing that his name is registered and uncanceled upon the great

register of such county; *provided*, that he is otherwise entitled to vote.

Eligibility to office.

SEC. 4445*f*. No person shall be eligible to or hold any office in said city, whether filled by election or appointment, unless he be a resident and elector therein, and shall have resided in such city for one year next preceding the date of such election or appointment.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Section 4446. Board of trustees.
4446*a*. Meetings.
4446*b*. Rules.
4446*c*. Franchises and resolutions.
4446*d*. Powers of board.
4446*e*. Enacting clause of ordinances.
4446*f*. Demands.
4446*g*. Indebtedness not to exceed available funds.
4446*h*. Incurring excess decided by vote.
4446*i*. Street, sidewalk, and sewer work.
4446*j*. Right of way.
4446*k*. Levy of taxes.
4446*l*. Equalization.
4446*m*. Construction of act.
4446*n*. Public work to be done by contract.

Board of trustees.

SEC. 4446. The board of trustees shall meet on the Monday next succeeding the date of said general municipal election, shall take the oath of office, shall choose one of their number president, and shall hold regular meetings at least once in each month, at such times as they shall fix by ordinance. Special meetings may be called at any time by the president of the board, or by three trustees, by written notice, delivered to each member at least three hours before the time specified for the proposed meeting. All meetings of the board of trustees shall be held within the corporate limits of the city, at such place as may be designated by ordinance, and shall be public.

Meetings.

SEC. 4446*a*. At any meeting of the board of trustees a majority of the trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The president of the board shall preside at all meetings of the board, and in case of his absence the board may appoint a president pro tem.; and in case of the absence of the

clerk, the president or president pro tem. shall appoint one of the members of the board clerk pro tem.

Rules.

SEC. 4446*b*. The board of trustees shall judge of the qualification of its members, and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member, or other person, for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and at the desire of any member shall cause the ayes and noes to be taken on any question and entered on the journal.

Franchises and resolutions.

SEC. 4446*c*. No ordinance for any purpose, and no resolution granting any franchise for any purpose, shall be passed by the board of trustees on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting. No resolution or order for the payment of money shall be passed at any other time than at a regular meeting. And no such ordinance, resolution, or order shall have any validity or effect unless passed by the votes of at least three trustees.

COMMISSIONERS' NOTE: The words "for any purpose" have been added after the word "ordinance," to remove the doubt as to the true construction of this section, raised in the case of Derby vs. The City of Modesto, wherein it was contended that the restriction as to time applied only to "ordinances and resolutions granting a franchise." The commissioners are of the opinion that the restriction is reasonable and necessary, and should apply to all ordinances, hence have suggested the amendment. As amended it is in harmony with the corresponding section in charters for cities of the fifth class. See section 4439*c*, *ante*.

Powers of board.

SEC. 4446*d*. The board of trustees of said city shall have power:

1. To pass ordinances not in conflict with the constitution and laws of this state or of the United States;

2. To purchase, lease, or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for the benefit of the city or town; *provided*, they shall not have power to sell or convey any portion of any water front;

3. To contract for supplying the city with water for municipal purposes, or to acquire, construct, repair, and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for the use of such city or its inhabitants, or for irrigating purposes therein;

4. To establish, build, and repair bridges; to establish, lay out, alter, keep open, improve, and repair streets, sidewalks, alleys, squares, and other public highways and places within the city, and to drain, sprinkle, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel, and curb the same in whole or in part, and to construct gutters, culverts, sidewalks, and crosswalks therein, or on any part thereof; to cause to be planted, set out, and cultivated, shade trees therein; and generally to manage and control all such highways and places;

5. To construct, establish, and maintain drains and sewers;

6. To provide fire engines, and all other necessary or proper apparatus for the prevention and extinguishment of fires;

7. To impose on and collect from every male inhabitant, between the ages of twenty-one and sixty years, an annual street poll tax, not exceeding two dollars; and no other road poll tax shall be collected within the limits of the city;

8. To impose and collect an annual license not exceeding two dollars on every male dog and four dollars on every female dog owned or harbored within the limits of the city;

9. To levy and collect annually a property tax which shall not exceed seventy-five cents on each one hundred dollars;

10. To license for the purpose of revenue and regulation all and every kind of business authorized by law, and transacted and carried on in such city, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise; *provided*, that any license taxes collected under a city ordinance shall be collected by the city marshal, and paid into the city or town treasury for the use of the city or town in which it is collected;

11. To improve the rivers and streams flowing through such city, or adjoining the same; to widen, straighten, and deepen the channels thereof, and remove obstructions therefrom; to improve the water front of the city; to construct and maintain embankments and other works to protect such city from overflow, and to acquire, own, construct, maintain, and operate on any lands bordering on any navigable bay, lake, inlet, river, creek, slough, or arm of the sea, within the corporate limits of such city, or contiguous thereto, wharves, chutes, piers, breakwaters, bathhouses, and life saving stations.

12. To erect and maintain buildings for municipal purposes;

13. To acquire, own, construct, maintain, and operate street railways, telephone and telegraph lines, gas and other works

for light and heat, public libraries, museums, gymnasiums, parks, and baths, and to permit, under such restrictions as they may deem proper, the laying of railroad tracks, and the running of cars drawn by horses, steam, or other power thereon, and the laying of gas, water and other pipes in the public streets, and to permit the construction and maintenance of telegraph and telephone and electric lines therein;

14. To impose fines, penalties, and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed three hundred dollars, nor the term of imprisonment exceed three months;

15. To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other public property or works within the city;

16. To do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter.

Enacting clause of ordinances.

SEC. 4446*e*. The enacting clause of all ordinances shall be as follows:

"The board of trustees of the city of ——— do ordain as follows."

Every ordinance shall be signed by the president of the board of trustees, attested by the clerk, and published at least once in a newspaper published in such city or town, or printed and posted in at least three public places therein.

Demands.

SEC. 4446*f*. All demands against such city or town shall be presented to and audited by the board of trustees, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the president of the board shall draw a warrant upon the treasurer for the same, which warrant shall be countersigned by the clerk, and shall specify for what purpose the same is drawn, and out of what fund it is to be paid.

Indebtedness, not to exceed available funds.

SEC. 4446*g*. The board of trustees shall not create, audit, allow, or permit to accrue, any debt or liability in excess of the available money in the treasury that may be legally apportioned and appropriated for such purposes; *provided*, that any city or town during the first year of its existence under this chapter may incur such indebtedness or liability as may be

necessary, not exceeding in all the income and revenue provided for it in such year; nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as hereinafter provided;

Incurring excess decided by vote.

SEC. 4446*h*. If at any time the board of trustees shall deem it necessary to incur any indebtedness in excess of the money in the treasury applicable to the purpose for which such indebtedness is to be incurred, they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the purpose or purposes of the same, and the amount of money necessary to be raised annually, by taxation, for an interest and sinking fund, as hereinafter provided. Such interest shall not be in excess of seven per cent per annum. Such notice shall be published for at least two weeks in some newspaper published in such city; and no other question or matter shall be submitted to the electors at such election. If upon a canvass of the votes cast at such election it appears that not less than two thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the board of trustees to pass an ordinance providing for the mode of creating such indebtedness, and of paying the same; and in such ordinance provision shall be made for the levy and collection of an annual tax upon all the real and personal property subject to taxation within such city, or town, sufficient to pay the interest on such indebtedness as it falls due; and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than forty years from the time of contracting the same. It shall be the duty of the board of trustees, in each year thereafter, at the time at which other taxes are levied, to levy a tax sufficient for such purpose, in addition to the taxes by this chapter authorized to be levied. Such tax, when collected, shall be kept in the treasury as a separate fund, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

COMMISSIONERS' NOTE: The time for which bonds may run has been changed from twenty to forty years, to conform to the general law upon that subject. Sections 867 and 868 of the original act have been omitted from this place and have been inserted as sections 4449*b* and 4449*d* under the article on miscellaneous provisions.

Street, sidewalk and sewer work.

SEC. 4446*i*. The board of trustees are hereby authorized and empowered to order any work authorized by this chapter to be done upon the streets, avenues, highways, and public places of such city or town. The cost and expense incurred therefor shall be paid as follows, to wit: The expense or cost of improving and repairing streets, sidewalks, alleys, squares, and other public highways and places within the city, removing obstructions therefrom, grading, paving, macadamizing, graveling, and curbing the same, and constructing gutters, culverts, and sidewalks therein, shall be assessed upon the lots and lands fronting thereon, each lot or portion of a lot being separately assessed for the full depth thereof in proportion to the benefits upon the property to be benefited, sufficient to cover the total expense of the work to the center of the street on which it fronts; *provided*, that the board of trustees may expend from the general fund for said purposes a sum which, in their judgment, may be necessary. The expense of all improvements in the space formed by the junction of two or more streets, or where one main street terminates in or crosses another main street, and also all necessary street crossings, or crossways at corners or intersection of streets, and the expense of establishing, building, and repairing bridges in such city, shall be paid by such city. The expense incurred in making and repairing sewers in any street shall be paid, one fourth by the owner on the lands on one side of said street, one fourth by the owner of the land on the other side of said street, and one half by the city out of the sewer fund. In all the streets constituting the water-front of such city, or bounded on the one side by the property thereof, the expense of work done on that portion of said streets, from the center line thereof to the said water-front, or to such property of the city bounded thereon, shall be paid for by such city, but no contract for any such work shall be given except to the lowest responsible bidder, and in the manner hereinafter provided. When any work or improvements mentioned in this section is done or made on one side of the center line of said streets, avenues, or public highways, the lots or portions of lots fronting on that side only shall be assessed to cover the expenses of said work, according to the provisions of this chapter. Whenever any expenses or costs of work shall have been assessed on any lands, the amount of said expenses shall become a lien upon said lands, which shall take precedence of all other liens, and which may be foreclosed in accordance with the provisions of

the Code of Civil Procedure. Such suit shall be in the name of such city as plaintiff. Upon the filing of a complaint in the superior court to enforce a lien of any kind hereon, the plaintiff shall be entitled, if the recovery is had or the money is paid, to include as costs the sum of twenty-five dollars as attorney's fees.

Right of way.

SEC. 4446*j*. Whenever it shall become necessary for the city to take or damage private property for the purpose of establishing, laying out, extending, and widening streets and other public highways, and places within the city for the purpose of rights of way for drains, sewers, and aqueducts, and for the purpose of widening, straightening, or diverting the channels of streams, and the improvement of water fronts, and the board of trustees cannot agree with the owner thereof as to the price to be paid, the trustees may direct proceedings to be taken under section 1237, and following sections, to and including section 1263, of the Code of Civil Procedure, to procure the same.

Levy of taxes.

SEC. 4446*k*. The board of trustees shall have power, and it shall be their duty, to provide by ordinance a system for the assessment, levy, and collection of all city taxes not inconsistent with the provisions of this chapter, which system shall conform as nearly as the circumstances of the case may permit to the provisions of the laws of this state in reference to the assessment, levy, and collection of state and county taxes, except as to the times for such assessment, levy, and collection, and except as to the officers by whom such duties are to be performed, and except that the provisions requiring the state to purchase all property sold for non-payment of taxes shall not apply thereto. All taxes assessed, together with any percentage imposed for delinquency, and the costs of collection, shall constitute liens on the property assessed, from and after the first Monday in March in each year; which liens may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance, or by actions in any court of competent jurisdiction to foreclose such liens; *provided*, that any property sold for such taxes shall be subject to redemption within the time and manner provided, or that may hereafter be provided by law for the redemption of property sold for state or county taxes. All

deeds made upon any sale of property for taxes or special assessments, under the provisions of this chapter, shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for non-payment of state or county taxes.

Equalization.

SEC. 4446*l*. The board of trustees shall meet at their usual place of holding meetings on the second Monday of August of each year, at ten o'clock in the forenoon of said day, and sit as a board of equalization, and shall continue in session from day to day until all the returns of the assessor have been rectified. They shall have power to hear complaints, and to correct, modify, or strike out any assessment made by the assessor, and may, of their own motion, raise any assessment, upon notice to the party whose assessment is to be raised. The corrected list for each tax shall be the assessment roll for said tax for said year. It shall be certified by the clerk, who shall act as clerk of the board of equalization, as being the assessment roll for said tax, and shall be the assessment roll upon which such tax is to be levied in said year.

Construction of act.

SEC. 4446*m*. Nothing in this chapter contained shall be construed to prevent any city having a bond indebtedness, contracted under laws heretofore passed, from levying and collecting such taxes for the payment of such indebtedness, and the interest thereon, as are provided for in such laws, in addition to the taxes herein authorized to be levied and collected. All moneys received from licenses, street poll-tax, and from fines, penalties, and forfeitures, shall be paid into the general fund.

Public work to be done by contract.

SEC. 4446*n*. In the erection, improvement, and repair of all public buildings and works, in all street and sewer work, and in all work in and about streams, bays, or water fronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditure required for the same exceeds the sum of one hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation, printed and published in such city or town, for at least two weeks, or if there be no newspaper printed or published therein, by posting the same in at least four public places therein for the same

period; such notice shall distinctly and specifically state the work contemplated to be done; *provided*, that the board of trustees may reject any and all bids presented and readvertise, in their discretion. The board of trustees shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest bidder, after notice, as provided in this section.

COMMISSIONERS' NOTE: Section 875 of the original act, providing the powers and duties of the president of the board of trustees, and which was originally included in this article, has been transposed and carried into the succeeding article, which deals with the executive department. See next section.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Section 4447. President of the board, duties of.
4447*a*. Treasurer, duties of.
4447*b*. Assessor, duties of.
4447*c*. Clerk, duties of.
4447*d*. Attorney, duties of.
4447*e*. Marshal, duties of.
4447*f*. Compensation fixed by board.

President of the board, duties of.

SEC. 4447. The president of the board of trustees shall preside over all meetings of the board at which he is present. In his absence a president pro tem. may be chosen. The president, and in his absence the president pro tem., shall sign all warrants drawn on the treasurer, and shall sign all written contracts entered into by said city or town, as such president, or president pro tem. The authority and power of the president pro tem. shall continue only during the day on which he is chosen. The president and president pro tem. shall have power to administer oaths and affirmations, and take affidavits, and testify the same under their hands. The president or president pro tem. shall sign all conveyances made by said city or town, and all instruments which shall require the seal of the city. The president is authorized to acknowledge the execution of all instruments executed by said city that require to be acknowledged.

Treasurer, duties of.

SEC. 4447*a*. It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the clerk. He shall pay out said money on warrants signed by the president and countersigned by the clerk, and not otherwise. He shall make quarterly

settlements with the clerk. For his compensation he shall be allowed one per cent on all moneys received and paid by him as such treasurer. He may credit himself with such per cent in his settlements with the clerk. Upon each quarterly settlement he shall file a statement of his account with the clerk. He shall perform such other duties as may be imposed upon him by law or the ordinances of such city.

Assessor, duties of.

SEC. 4447*b*. It shall be the duty of the assessor, between the first day of May and the first day of August in each year, to make out a true list of all taxable property within the city. The mode of making out of said list, and proceedings relating thereto, shall be in conformity with laws now in force regulating county assessors, except as the same may be otherwise provided in this act, or by ordinance. Said list shall describe the property assessed and the value thereof, and shall contain all other matters required to be stated in such lists by county assessors. Said assessor shall verify said list by his oath, and shall deposit the same with the clerk on or before the first Monday of August of each year. The assessor shall, during said time, also make a list of all male persons residing within the limits of the city, over the age of twenty-one years, and shall verify said list by his oath, and shall, on or before the first Monday of August in each year, deposit the same with the clerk. Said assessor and his deputy shall have power to administer oaths and affirmations necessary in the performance of his duty.

Clerk, duties of.

SEC. 4447*c*. It shall be the duty of the clerk to keep a full, true record of all the proceedings of the board of trustees and of the board of equalization. The proceedings of the board of trustees shall be kept in a book, marked "records of the board of trustees." The proceedings of the board of equalization shall be kept in a separate book, marked "records of the board of equalization." He shall keep a book, which shall be marked "city accounts," in which shall be entered as a credit all moneys received by the city for licenses, the amount of any tax when levied, and all other moneys when received, and in which shall be entered upon the debtor side all commissions deducted and all warrants drawn on the treasury. He shall also keep a book, marked "marshal's account," in which he shall charge the marshal with all the tax lists delivered to him, and all licenses delivered to

him. He shall credit the marshal with the delinquent lists returned by him, and with his commission for collecting. He shall also keep a book, marked "treasurer's account," in which he shall keep a full account of the transactions of the city with the treasurer. He shall also keep a book, marked "licenses," in which he shall enter all licenses issued by him, the date thereof, to whom issued, for what, the time when it expires, and the amount paid. He shall also keep a book, marked "attorney's account," and shall therein charge said attorney with all delinquent tax lists delivered to him, and shall credit him with money paid and delinquent tax lists returned. He shall keep a book, marked "ordinances," into which he shall copy all city ordinances, with his certificate annexed to said copy stating the foregoing ordinance is a true and correct copy of an ordinance of the city, and giving the number and title of said ordinance, and stating that the same has been published or posted according to law. Said record copy with said certificate, shall be prima facie evidence of the contents of the ordinance and of the passage and publication of the same, and shall be admissible as such evidence in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. Each of the foregoing books, except the records of the board of trustees and the board of equalization, shall have a general index, sufficiently comprehensive to enable a person readily to ascertain matters contained therein. The clerk shall also keep a book, marked "demands and warrants," in which he shall note every demand against the city, and file the same. He shall state therein under the note of the demands, the final disposition made of the same; and if the same is allowed, and a warrant drawn, he shall also state the number of the warrant, with sufficient dates. This book shall contain an index, in which reference shall be made to each demand. Upon the completion of the assessment roll of any of the taxes of the city, and the levying of the tax thereon, the clerk shall apportion the taxes upon such assessment roll, and make out and deliver to the marshal a tax list in the usual form, taking his receipt therefor. He may appoint a deputy, for whose acts he and his bondsmen shall be responsible; and he and his deputy shall have power to administer oaths or affirmations, to take affidavits and depositions to be used in any court or proceeding, in the state, and to certify the same.

He and his deputy shall take all necessary affidavits to demands against the city, and certify the same without charge. He shall be the custodian of the seal of the city. He shall make a quarterly statement, in writing, showing the receipts and expenditures of the city for the preceding quarter, and the amount remaining in the treasury. He shall at the end of every fiscal year make a full and detailed statement of the receipts and expenditures of the preceding year, and a full statement of the financial condition of the affairs of the city, which shall be published. He shall perform such other services as this act and the ordinances of the board of trustees shall require.

Attorney, duties of.

SEC. 4447*d*. It shall be the duty of the attorney to advise the city authorities and officers in all legal matters pertaining to the business of said city. He shall receive the delinquent list and receipt therefor; he is authorized to bring suit in the name of the city, in the proper court, for the collection of any tax; he shall receive for collecting taxes such per cent on the amount collected as may be provided by ordinance, which said per cent shall be collected of the delinquent taxpayers as provided by ordinance. In case a suit shall be brought in the superior court upon a tax upon real estate to sell such real estate for the purpose of paying such tax and costs, he shall be allowed, in addition to the said per cent, twenty-five dollars for each suit brought, to be taxed as costs in such suit, and not to be paid to said attorney unless collected of the defendant in such suit. Said attorney shall receive such other compensation as may be allowed by the board of trustees.

Marshal, duties of.

SEC. 4447*e*. The department of police of said city shall be under the direction and control of the marshal; and for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions, he shall have the powers that are now or may hereafter be conferred upon sheriffs by the laws of the state, and shall in all respects be entitled to the same protection; and his lawful orders shall be promptly executed by deputies, police officers, and watchmen in said city, and every citizen shall also lend him aid, when required, for the arrest of offenders and maintenance of public order. He shall, and is hereby authorized to, execute and return all process issued and directed to him by any legal authority. It shall be

his duty to prosecute before the recorder all breaches or violations of or non-compliance with any ordinance which shall come to his knowledge. He shall collect all taxes levied by the board of trustees, except as herein provided. He shall, at the expiration of any month, pay to the treasurer all taxes and other funds of said city collected by him during the month. He shall, upon payment of the money, file with the treasurer an affidavit, stating that the money so paid is all the taxes or funds that he has collected or received during the preceding month. He shall, upon the receipt of any tax list, give his receipt for the same to the clerk, and shall, upon depositing with the clerk the delinquent tax list, take his receipt therefor. He shall receive from the clerk all licenses, and collect the same. He shall have charge of the prison and prisoners, and of any chain gang which may be established by the board of trustees. He shall for service of any process receive the same fees as constables. He may appoint, subject to the approval of the board of trustees, one or more deputies, for whose acts he and his bondsmen shall be responsible, whose only compensation shall be fees for the service of process, which shall be the same as allowed to the marshal. He may also, with the concurrence of the president of the board of trustees, when the same may be by them deemed necessary for the preservation of public order, appoint additional policemen, who shall discharge the duties assigned them for one day only. He shall perform such other services as this chapter and the ordinances of the board of trustees shall require, and shall receive such compensation as shall be fixed by the ordinance.

Compensation fixed by board.

SEC. 4447*f*. The board of trustees shall, by ordinances not inconsistent with the provisions of this chapter, prescribe the additional duties of all officers, and fix their compensation.

ARTICLE V.

JUDICIAL DEPARTMENT.

Section 4448. Recorder's court.
4448*a*. Powers of recorder as judge.
4448*b*. Recorder disqualified as judge, when.

Recorder's court.

SEC. 4448. A recorder's court is hereby established in such city, to be held by the recorder of such city. Said recorder's court shall have jurisdiction, concurrently with the justices' courts, of all actions and proceedings, civil and criminal, arising within the corporate limits of such city, and

which might be tried in such justice's court; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city, of all actions founded upon any obligation or liability created by any ordinance, and of all prosecutions for any violation of any ordinance. The rules of practice and mode of proceeding in said recorder's court shall be the same as are or may be prescribed by law for justices' courts in like cases; and appeals may be taken to the superior court of the county in which such city may be situated, from all judgment of said recorder's court, in like manner and with like effect as in cases of appeals from justices' courts.

Powers of recorder as judge.

SEC. 4448*a*. The recorder shall be judge of the recorder's court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments. He shall be entitled to charge and receive for his services such fees as are or may be allowed by law to justices of the peace for like services, except that for his services in criminal prosecution for violation of ordinances he shall be entitled to receive only such fees as the board of trustees shall by ordinance prescribe.

Recorder disqualified as judge, when.

SEC. 4448*b*. In all cases in which the recorder is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree, or is otherwise disqualified, or in case of sickness or inability to act, the recorder may call in a justice of the peace residing in the city to act in his place and stead; or if there be no justice of the peace residing in the city, or if all those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city may be situated.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

Section 4449. Collection of moneys.
4449*a*. No officer to be interested in contract.
4449*b*. Nuisances.
4449*c*. Fire department.
4449*d*. Violation of ordinances, how punished.

Collection of moneys.

SEC. 4449. Every officer collecting or receiving any moneys belonging to or for the use of such city shall settle for the same with the clerk on the first Monday in each month, and

immediately pay the same into the treasury, on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

No officer to be interested in contract.

SEC. 4449*a*. No officer of such city shall be interested, directly or indirectly, in any contract therewith, or with any of the officers thereof in their official capacity, or in doing any work or furnishing any supplies for the use of such city, or its officers in their official capacity; and any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor and shall be punished as such.

Nuisances.

SEC. 4449*b*. Every act or thing done, or being within the limits of such city, which is, or may be declared by law, or by any ordinance of such city to be a nuisance, shall be, and is hereby declared to be a nuisance, and shall be considered and treated as such in any actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

Fire departments.

SEC. 4449*c*. Fire departments in cities of the fifth class shall consist of volunteer companies of firemen, organized into engine, hose, or hook and ladder companies. Such fire department, and such fire companies shall elect their own officers; *provided*, that in the election of any person as chief of any such fire department, his election shall be forthwith certified by the secretary of said department to the board of trustees of such city, and by them, at their next regular meeting, confirmed, and such chief shall give a bond to the chairman of the board of trustees of such city in the sum of one thousand dollars; and the chief of every fire department must inquire into the cause of every fire occurring in the city, and keep a record thereof. He shall have exclusive control of the working of the fire department in time of conflagration or fire. He must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violation of ordinances relating to the prevention and extinguishment of fires when directed by the proper authorities, and institute pro-

ceedings therefor, and shall have general control, management, and direction of the fire companies, hose, hook and ladder companies, and engine, and fire departments of such city, and shall perform such other duties as may be by the ordinances of said city, or by law imposed upon him. His compensation, which shall not be less than ten dollars per month, must be fixed and paid by the board of city trustees.

Violation of ordinances, how punished.

SEC. 4449*d*. The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city in the name of the people of the state of California, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the jail of such city; or if the board of trustees by ordinance shall so prescribe, in the county jail of the county in which such city may be situated, in which case the expense of such imprisonment shall be a charge in favor of such county and against such city.

COMMISSIONERS' NOTE: The preceding section was section 867 of the original act, and has been inserted here as it properly belongs under "miscellaneous provisions." See note to section 4446*h*.

CHAPTER VIII.

CERTAIN STATUTES RELATING TO CITIES AND TOWNS AND EXISTING CORPORATIONS CONTINUED.

Certain statutes continued in force.

SEC. 4450. Nothing in this code affects any of the provisions of "An act to authorize and direct the municipal authorities of the several cities and incorporated towns of this state to execute certain trusts in relation to the town lands granted to the incorporated cities and towns in this state by the act of congress entitled an act for the relief of the inhabitants of cities and towns upon public lands, approved March second, eighteen hundred and sixty-seven; approved March twenty-fourth, eighteen hundred and sixty-eight;" or of "An act to authorize and direct the county judges of the several counties of this state to execute certain trusts in relation to the town lands granted to the unincorporated towns in this state by the act of congress entitled an act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March thirteenth,

eighteen hundred and sixty-eight;" but such acts are continued in force.

COMMISSIONERS' NOTE: It was not deemed necessary or desirable to codify the statutes above referred to. They will be found in the volume of uncodified laws.

TITLE IV.

LIABILITIES OF COUNTIES AND CITIES FOR INJURIES TO PROPERTY BY MOBS OR RIOTS.

CHAPTER I.

Section 4452. Municipal corporations responsible for injuries by mobs or riots.
4453. Actions for damages thus caused must be tried, where.
4454. When action must be commenced.
4455. Warrant to be issued for payment of damages; tax therefor.
4456. Plaintiff not to recover if damage resulted from his own neglect.
4457. Application of foregoing provisions to injuries to levees, etc.

Municipal corporations responsible for injuries by mobs or riots.

SEC. 4452. Every county and municipal corporation is responsible for injuries to real or personal property situated within its corporate limits, done or caused by mobs or riots.

COMMISSIONERS' NOTE: The word "county" has been added to the above section, as it is evident from the caption of the title, and from section 4455, that the legislature intended such liability to extend also to the county.

Actions for damages thus caused must be tried, where.

SEC. 4453. Actions for damages under the preceding section must be tried in the county in which the property injured is situated.

When action must be commenced.

SEC. 4454. All actions herein provided for must be commenced within one year after the act complained of is committed.

Warrant to be issued for payment of damages; tax therefor.

SEC. 4455. On the certificate of the presiding officer, or of the clerk of the court in which the judgment is rendered, the board of supervisors of the county, or the legislative authority of the city, must by ordinance direct and cause to be issued a warrant for the payment thereof on the general fund, and the same must be paid in its regular order, as other warrants of the municipal corporation are paid; and must at the proper

times levy and cause to be collected a tax on the taxable property of such municipal corporation for the payment of such warrant within a period of not more than three years.

Plaintiff not to recover if damage resulted from his own neglect.

SEC. 4456. The plaintiff, in any action authorized by this title, must not recover if it appears upon the trial that the damage complained of was occasioned, or in any manner caused, aided, sanctioned, or permitted, by his carelessness or negligence.

Application of foregoing provisions to injuries to levees, etc.

SEC. 4457. The provisions of this title and chapter are applicable to cases where the levees and other works of reclamation of any district are injured or destroyed by mobs or riots; and the actions brought for damages therefor must be prosecuted by the attorney-general of the state, in the name of the people of the state of California, and the amount recovered in such actions must be paid to the treasurer of the county, who must place the same to the credit of the district.

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